TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 24.

SARAH S. FALL, PLAINTIFF IN ERROR,

vs.

ELIZABETH EASTIN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

FILED NOVEMBER 18, 1907.

(20,902.)

(20,902.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 203.

SARAH S. FALL, PLAINTIFF IN ERROR,

vs.

ELIZABETH EASTIN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

INDEX.

	Original.	Print.
Writ of error	1	1
Return to writ of error	4	2
Citation and service	6	2
Caption	8	3
Transcript from the district court of Hamilton county	9	3
Caption	9	3
Petition	9	4
Security for costs	20	12
Order for default	20	13
Answer of Wm. H. Fall	21	13
Order setting aside default of Wm. H. Fall	21	14
Judgment	22	14
Application to open judgment, &c.	23	15
Answer of Elizabeth Eastin	24	16
Notice of application to open judgment	29	20
Order granting application to open judgment, &c.	30	21
Reply	31	21
Order beginning hearing	34	24
Order continuing hearing	35	25
Decree	35	25
Supersedeas bond	38	28
Clerk's certificate	39	28

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 29, 1908.

	Original.	Print.
Bill of exceptions	40	29
Stipulation as to bill of exceptions (omitted in printing)	41	—
Index to testimony (" ")	43	—
Testimony of Sarah S. Fall	44	29
Exhibit A – Power of attorney from Sarah S. Fall to John W. Haworth, October 23, 1895	49	32
Testimony of John Hayworth (omitted in printing)	55	—
Offer of Exhibit B and objections (" ")	58	—
Exhibit B—Record from superior court of King county, State of Washington, in case of E. W. Fall *vs.* Sarah S. Fall	59	36
Summons and service	60	36
Complaint	62	37
Answer and cross-complaint	67	39
Affidavit of Sarah S. Fall	74	43
Affidavit of E. W. Fall	77	45
Reply to answer and cross-complaint	79	46
Affidavit of Elizabeth Wiley (omitted in printing)	82	—
Carrie Stevens (omitted in printing)	83	—
Anna White (omitted in printing)	84	—
Sarah S. Fall (" ")	86	—
Order to show cause (" ")	87	—
Motion to set aside order to pay attorney fees, &c. (omitted in printing)	88	—
Affidavit of E. W. Fall (" ")	89	—
Note of trial – Issue of law (omitted in printing)	90	—
Order denying motion to set aside order for alimony, &c (omitted in printing)	92	—
Affidavit of John Wiley (" ")	93	—
Affidavit of Sarah S. Fall (omitted in printing)	94	—
Stipulation as to deposition of Maud Williams Boyle (omitted in printing)	100	—
Deposition of Maud Boyle (omitted in printing)	101	—
Wm. H. Fall (omitted in printing)	107	—
Elizabeth Fall (omitted in printing)	113	—
Mary Childre (omitted in printing)	116	—
George W. Daniels (omitted in printing)	120	—
L. J. Howell (omitted in printing)	121	—
Stipulation as to depositions (omitted in printing)	124	—
Interrogatories to Wm. H. Fall *et al.* (omitted in printing)	125	—

	Original.	Print.
Stipulation as to depositions (omitted in printing)	132	—
Deposition of Charles B. Timberlake (omitted in printing)	133	—
Maggie Timberlake (omitted in printing)	135	—
Charles B. Timberlake (cross) (omitted in printing)	137	—
Maggie Timberlake (cross) (omitted in printing)	139	—
Hearing and decision	143	48
Decree signed	144	48
Findings of fact	145	49
Conclusions of law	146	50
Decree	147	50
Notice of findings of fact &c.	149	51
Note for motion calendar	150	52
Order denying motion to correct findings	151	52
Notice of appeal	152	53
Bond on appeal (omitted in printing)	153	—
Stipulation extending time to prepare statement of facts (omitted in printing)	155	—
Statement of facts (" ")	156	—
Objections to statement of facts (omitted in printing)	162	—
Order sustaining objections, &c. (omitted in printing)	164	—
Certified copy of order dismissing appeal in supreme court	165	53
Affidavit of J. L. Dudley	167	54
Affidavit of Sarah S. Fall	168	55
Notice of motion to appoint commissioner	170	55
Order appointing commissioner	171	56
Assignment of judgment (omitted in printing)	173	—
Order granting leave to withdraw deed	175	57
Affidavit and petition granted	176	57
Commissioner's deed, July 3, 1896	177	57
Certificates to record	178	58
Offer of Hill's Annotated Statutes and Codes of Washington	179	59
General Statutes and Codes of the State of Washington	180	60
Preface	181	60
Page 365, section 2007	182	61
Opinion in Webster *vs.* Webster	183	61
Opinion in Fields *vs.* Fields	187	64
Reports offered	191	68
Offer of Exhibit C, &c.	191	68
Motion for dismissal	193	70
Exhibit C—Abstract of title	193*a*	69
Exhibit A—Findings of fact, conclusions of law, and decree	194	70
B—Notice of *lis pendens*	198	73

	Original.	Print.
Exhibit C—Commissioner's deed, July 3, 1896.	199	74
D—Decree of September 30, 1897	201	75
E—Notice of *lis pendens*	203	76
F—Certificate of clerk of county of Essex, New Jersey	204	77
Abstract of title	205	77
Testimony of Dr. C. P. Fall (omitted in printing)	206	—
Testimony of Wm. H. Fall (" ")	235	—
Exhibit D—Note of E. W. Fall and Wm. H. Fall to Elizabeth Eastin, September 8, 1893 (omitted in printing)	255	—
E—Deed from E. W. Fall to Elizabeth Eastin, April 7, 1896 (omitted in printing)	256*a*	—
Bill of sale from E. W. Fall to W. H. Fall (omitted in printing)	279	—
Testimony of Mrs. W. H. Fall (omitted in printing)	280	—
Testimony of Elizabeth Eastin	301	78
Exhibit H—Letter of Elizabeth Eastin to Brother Ed., January 15, 1896	308	82
G—Letter of Mrs. H. S. Buser to Elizabeth Eastin, August 1, 1902	309	83
Deposition of John M. Glassco (omitted in printing)	330	—
Charles Gramsley (" ")	334	—
Mrs. Charles Gramsley (" ")	340	—
W. R. Highland (" ")	349	—
J. H. McClelland (" ")	356	—
Testimony of E. J. Hainer (" ")	361	—
Letter of Hainer & Smith to Lucian Wheatley, June 23, 1903 (omitted in printing)	362	—
Stipulation as to testimony (omitted in printing)	364	—
Deposition of William McCrory (" ")	365	—
Testimony of Sarah S. Fall (recalled)	371	95
Exhibit I—Letter of E. H. Eastin to Sadie and Ed., October 16, 1884	372	96
J—Letter addressed to dear Brother Ed., dated Charleston, Illinois, November 8, 1884	375	97
K—Receipt of W. H. Fall, October 30, 1893	379	101
L—Letter of Wm. H. Fall to E. W. Fall, October 23, 1891	380	102
Offers of parts of depositions	388	106
Testimony of Mrs. Elizabeth Wiley (omitted in printing)	392	—
John Hayworth (recalled) (omitted in printing)	395	—
W. H. Fall (recalled) (omitted in printing)	397	—
Deposition of Elizabeth Eastin (" ")	400	—
Elizabeth Eastin (recalled) (omitted in printing)	436	—
Alfred W. Agee (omitted in printing)	437	—
Receipt for draft of bill of exceptions (omitted in printing)	440	—
Clerk's certificate to bill of exceptions (" ")	442	—
Clerk's certificate to bill of exceptions (" ")	443	—
Order giving leave to file motion to strike reply brief of appellants from files (omitted in printing)	444	—

	Original.	Print.
Motion to strike appellants' reply brief.....(omitted in printing)..	446	—
Order on motion to strike.....(" ")..	447	—
Order of continuance.....(" ")..	448	—
Order of continuance.....(" ")..	449	—
Order of continuance .....(" ")..	450	—
Order granting leave to file supplemental transcript (omitted in printing)	451	—
Supplemental transcript from district court.....	453	108
Affidavit of A. W. Agee.....	453	108
Proof of publication of notice.....	455	109
Notice to non-residents.....	456	110
Judgment, September 30, 1897.....	457	111
Clerk's certificate.....	458	112
Argument and submission.....(omitted in printing)..	459	—
Order for reargument.....(" ")..	460	—
Reargument and submission.....(" ")..	461	—
Judgment	462	112
Opinion	464	113
Dissenting opinion.....	486	123
Motion for rehearing by Elizabeth Eastin	488	123
Order granting rehearing.....	492	126
Notice and proof of service.....(omitted in printing)..	494	—
Notice and proof of service..... .....(" ")..	495	—
Argument and submission.....(" ")..	496	—
Judgment	497	126
Opinion	499	127
Dissenting opinion.....	517	137
Motion for leave to file petition for rehearing.	535	148
Motion for rehearing by Sarah S. Fall.....	537	148
Order to hold mandate	542	152
Order denying rehearing.....	543	152
Order allowing writ of error.....	544	152
Petition for writ of error	545	153
Order allowing writ of error.....	549	155
Assignment of errors.....	552	156
Bond on writ of error.....	557	158
Motion for additional bond.....(omitted in printing)..	560	—
Order denying motion for additional bond...(" ")..	568	—
Clerk's certificate.....	569	159
Designation by counsel for plaintiff in error of parts of record to be printed and proof of service of same.....	570	160

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the judges of the supreme court of Nebraska, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the state of Nebraska before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in said suit between Sarah S. Fall, plaintiff and appellee and Elizabeth Eastin, defendant and appellant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said state, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute or commission; a manifest error hath happened to the great damage of the said Sarah S. Fall as by her complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days of the date hereof, that the record and proceedings aforesaid being inspected, the Supreme Court may cause to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

2 Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 15th day of October, in the year of our Lord one thousand nine hundred and seven.

Issued at the office of the clerk of the Circuit Court of the United States for the district of Nebraska, with the seal of said Circuit Court of the United States for the district of Nebraska on the date aforesaid.

[Seal United States Circuit Court, District of Nebraska.]

GEO. H. THUMMEL.
Clerk of the Circuit Court
for the District of Nebraska.

Allowed by:

SAMUEL H. SEDGWICK,
Chief Justice of the Supreme Court
of the State of Nebraska.

3 [Endorsed:] No. 13,737. Supreme Court of the United States. Sarah S. Fall, plaintiff in error, *vs.* Elizabeth Eastin, defendant in error. Writ of error. Supreme Court of Nebraska. Filed Oct. 15, 1907. H. C. Lindsay, clerk.

4 STATE OF NEBRASKA, *ss:*

In obedience to the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled case together with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of the Supreme Court of the State of Nebraska, at the City of Lincoln, this 7th day of November, 1907.

[Seal Supreme Court of Nebraska.]

H. C. LINDSAY,
Clerk of the Supreme Court of Nebraska,
By VICTOR SEYMOUR, *Deputy.*

5 And afterwards on the same day there was made to issue out of said Court a certain Citation in the words and figures following, towit:

6 UNITED STATES OF AMERICA, *ss:*

To Elizabeth Eastin, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of Nebraska, wherein Sarah S. Fall is the plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel H. Sedgwick, chief justice of the supreme court of Nebraska, this 15th day of October, in the year of our Lord one thousand nine hundred and seven.

SAMUEL H. SEDGWICK,
Chief Justice of the Supreme Court of Nebraska.

Service of this citation is accepted this — day of October, 1907.

——— ———,
——— ———,
Attorneys for Elizabeth Eastin.

THE STATE OF NEBRASKA,
Lancaster County, ss:

I hereby certify that on the 1st day of Nov., A. D. 1907, I served the within writ of notice on the within named Elizabeth Eastin by delivering in person to J. H. Smith, of Hainer & Smith, attorneys for

said Elizabeth Eastin, a true and certified copy of the same, with all endorsements thereon, as required by law. All done in Lancaster county, Nebraska.

NICHOLAS REES, *Sheriff.*
By J. T. DAWSON, *Deputy.*

Service & Return	50
Copies	25
Mileage	25
	1.00

Supreme Court of Nebraska. Filed Nov. 2, 1907. H. C. Lindsay, Clerk.

7 [Endorsed:] No. 13,737 Supreme Court of the United States Sarah S. Fall, Plaintiff in Error, *vs.* Elizabeth Eastin, Defendant in Error. Citation. Supreme Court of Nebraska Filed Oct. 15, 1907 H. C. Lindsay, Clerk. Supreme Court of Nebraska Filed Nov. 2 1907 H. C. Lindsay, Clerk.

8 Pleas before the Supreme Court of the State of Nebraska, at a term thereof begun and holden at the capitol, in the City of Lincoln, in said State, on the 17th day of September, 1907.

Present: Hon. Samuel H. Sedgwick, Chief Justice, Hon. John B. Barnes, Judge, Hon. Charles B. Letton, Judge.

Attest:
H. C. LINDSAY, *Clerk.*

Be it remembered, That on the 12th day of May, 1904, there was filed in the office of the Clerk of said Supreme Court a certain transcript, in the words and figures following, towit:

9 STATE OF NEBRASKA,
County of Hamilton, ss:

Pleas before the District Court of the County of Hamilton and State of Nebraska, at a term begun and holden on the 10th day of May, 1897, before S. H. Sedgwick, one of the judges of said court.

Docket 7, No. 1854, Page 121.

SARAH S. FALL, Plaintiff,
vs.
EDMUND WEBSTER FALL, WILLIAM H. FALL, and ELIZABETH EASTIN, Defendants.

Be it remembered that on the 27th day of March, 1897, there was filed in the office of the Clerk of the District Court of the County of Hamilton and State of Nebraska, a petition in the words and figures following towit:

In the District Court of the Fifth Judicial District of the State of Nebraska in and for Hamilton County.

SARAH S. FALL, Plaintiff,
vs.
EDMUND WEBSTER FALL, WILLIAM H. FALL, and ELIZABETH EASTON, Defendants.

Petition.

Comes now the above named plaintiff by Alfred W. Agee and John Wiley, her attorneys, and complaining of the defendants, and each of them for cause of action alleges:

1.

That on the 10th day of October, 1876, at Thorntown, Indiana, this plaintiff and the defendant, Edmund Webster Fall, intermarried with each other and from said date until the 5th day of October, 1895, were husband and wife.

10 2.

That during the existence of the marriage relation existing between this plaintiff and the said defendant they removed from the state of Indiana to the State of Nebraska, and while living in said last mentioned state by their joint efforts, accumulations and earnings acquired jointly, and by the same conveyance, the title to the following described real estate, towit: The southwest quarter (S. W. 4) of Section twelve (12) township eleven (11) North, Range Seven (7) West, of the sixth principal meridian in Hamilton County, Nebraska.

3.

That from the year 1878 until the year 1889, this plaintiff and the said defendant lived and resided in the State of Nebraska.

4.

That in the year 1889 this plaintiff and the said defendant E. W. Fall removed from the said State of Nebraska to Seattle, in the State of Washington, where they continued to reside as husband and wife until the first day of January, 1895 at which time they separated and resided separate and apart from each other in the said State of Washington until the 27th day of February 1895, on which date both of said parties being citizens and residents of King County, State of Washington, the said E. W. Fall, commenced an action against the plaintiff herein and defendant therein for divorce from the bonds of matrimony then existing between plaintiff herein and defendant therein and defendant herein and plaintiff therein, E. W. Fall in the Superior Court of the State of Washington in and for the County of King, the said court being a court of record of general jurisdiction and particularly of matters of divorce and of the settlement of property rights of parties thereto.

5.

That in said complaint for divorce in said action the plaintiff therein and defendant herein E. W. Fall, alleged that "the plaintiff and defendant have desided in the State of Washington since 1889 and now are *bona fide* residents of the County of King in said State", and, "that the plaintiff is the owner of the southwest quarter
11 (S. W. 4) of Section twelve (12) township eleven (11) Range seven (7) a farm in Hamilton County, Nebraska, of the reasonable value of Three Thousand Dollars ($3000.00) upon which there is a mortgage for the sum of One Thousand Dollars ($1000.00) said farm being the separate property of the plaintiff having been purchased with the money received by plaintiff from the estate of his parents."

6.

That by the prayer of his said complaint the defendant herein and plaintiff therein E. W. Fall, prayed the said court for a decree of absolute divorce from the bonds of matrimony then existing between the said defendant and this plaintiff and for a just and equitable division of the property therein and herein described.

7.

That afterwards, and within the time allowed by law the plaintiff herein and defendant therein duly appeared in said action and filed her answer and cross-complaint denying each and every allegation contained in the complaint of the defendant herein and plaintiff therein, E. W. Fall as to the ownership of the property therein and herein described, and alleging in paragraph three of her said cross complaint "that the plaintiff and defendant are the owners as a community of the following described community property, towit: The southwest quarter (S. W. 4) of Section twelve (12) township eleven (11) North, Range seven (7), in Hamilton County, Nebraska, being a farm in cultivation, with buildings and outbuildings (which is of the reasonable value of Four Thousand Dollars (4000.00) upon which there is a mortgage executed by plaintiff and defendant in the sum of One Thousand Dollars ($1000.00); that the said farm was purchased with the money and proceeds of the joint labor of plaintiff and defendant after their marriage.

8.

That the defendant therein and plaintiff herein by the prayer of her said cross-complaint prayed the court as follows, towit: Wherefore, defendant prays that a decree of divorce be not granted or awarded to the plaintiff, but that she be granted a decree of divorce against the plaintiff and that the bonds of matrimony heretofore and now existing between them be absolved and held for naught".
12 2. That the property heretofore mentioned and described, towit: The S. W. ¼ of Section 12, township 11, north, range 7 in Hamilton County Nebraska, be set apart to her as her own separate property, subject only to the mortgage in the sum of one thousand dollars now an encumbrance thereon."

9.

That afterwards and within the time required by law the plaintiff therein and defendant herein, E. W. Fall, duly filed in said cause his reply to the answer and cross complaint of the defendant therein and plaintiff herein, which said reply contained the following denial, towit: "he denies that the defendant is the owner as a member of the community in conjunction with this, plaintiff of the property therein described or any part thereof."

10.

That the plaintiff therein and defendant herein E. W. Fall, by his reply in said action prayed the court as follows, to-wit: Wherefore plaintiff demands judgment" as in his complaint prayed."

11.

That during all of the times herein mentioned there was in full force and effect an act of the legislature of the State of Washington, duly approved by the governor of said state, in words and figures as follows, towit:

"SEC. 2007. In granting a divorce, the court shall also make such disposition of the property of the parties as shall appear just and equitable, having regard to the respective merits of the parties, and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it for the benefit of the children, and shall make provision for the guardianship custody and support and education of the minor children of such marriage."

12.

That prior to the commencement of the said action for divorce by the defendant herein and plaintiff therein, E. W. Fall and at all times herein mentioned the said statute in the preceding paragraph set out and described had received by the Supreme Court of said state, the same being the highest court of said state, the following construction, towit:

13 "This statute, however, provides that when coverture is to be broken, and the marriage relations dissolved that the parties shall bring into court all their property, and a complete showing must be made. Each party must lay down before the chancellor all that he or she has, and after an examination into the whole case, he makes an equitable division. We are clearly of the opinion that Section 2007 of the Code confers upon the court the power, in its discretion, to make a division of the separate property of the wife or husband."

13.

That afterwards towit, on the 5th day of October 1895, the said cause of action in the Superior Court of Kings County, State of Washington came duly on for trial upon the issues made by the pleadings therein, the parties thereto and hereto, Sarah S. Fall and E. W. Fall appearing in person and by their respective attorneys,

and the court having heard the evidence and being fully advised in the premises made the following findings of fact, towit:

"1. That the plaintiff E. W. Fall and the defendant and cross complainant, Sarah S. Fall intermarried in Boone County, Ind., on the 10th day of October, 1876 and have ever since been, and now are, husband and wife.

"2. That for more than three years last past plaintiff and defendant have resided together as such husband and wife in Seattle, Washington.

"3. That no children have been born to said parties as the issue of said marriage.

"4. That plaintiff and defendant, while living together as such husband and wife, accumulated property of the value of about $5000.00 and that plaintiff, in order to obtain a medical education and properly prepare himself for the practice of medicine, expended a large amount of said property, leaving the following property towit: The S. W. ¼ of Sec. 12, twp. 11 N. range 7, in Hamilton County, Nebraska, together with and interest in certain crops growing on said land, the same being a farm under cultivation with buildings and outbuildings of the reasonable value of $3000.00 upon which there is a mortgage executed by plaintiff and defendant for the sum of $1000.00; also certain personal property consisting of household furniture now in the possession of the defendant of the value of $50.00 and certain personal property consisting of office furniture and fixtures, library and medical instruments and appliances, of the value of $100.00 now in the possession of the plaintiff, and that said plaintiff and defendant have no other property whatever.

"5. That for more than two years last the plaintiff has been addicted to drinking intoxicating liquors, and becoming intoxicated and has been rough, abusive, quarrelsome, and has *been* abused and mistreated the defendant in such cruel and inhuman manner, cursing her, calling her names and striking her to such an extent as to render life a burden to her.

"6. That plaintiff is a strong able bodied man, well educated and a competent and skillful physician and surgeon, and in every respect able to earn a living and accumulate money and property; that the defendant is a woman of fragile health without strength or ability to earn a living or to accumulate property or money.

"7. The court finds that the defendant and cross-complainant, Sarah S. Fall is entitled to judgment and decree of divorce and is entitled to have set off to her that certain personal property consisting of household goods and furniture now in her possession, and that certain tract or real estate above described, towit: the S. W. ¼ of Sec. 12, twp. 11 N. range, 7, in Hamilton County Nebraska together with the appurtenances thereto and all crops grown or growing thereon for the year 1895, that the plaintiff E. W. Fall is entitled to the whole of the personal property consisting of *of* office furniture and fixtures, library, medical instruments and appliances heretofore mentioned now in his possession."

14.

14 That upon the said findings of fact therein made and hereinbefore set out the said court duly made the following conclusions of law, towit:

"1. That the plaintiff is not entitled to a decree of divorce in said cause, but that the defendant and cross-complainant, Sarah S. Fall, is entitled to a decree of divorce against the plaintiff, dissolving the bonds of matrimony heretofore and now existing between them.

"2. That the defendant and cross complainant Sarah S. Fall is entitled to a decree of this court, setting apart to her as her own separate property forever, the personal property consisting of household goods, furniture and fixtures now in her possession, and the certain tract of real estate towit: the S. W. ¼ of Sec. 12 twp. 11 N. range 7 in Hamilton County Neb. with all the appurtenances thereto, and the crops grown and growing thereon for the year 1895, and is entitled to a decree of this court causing said property to be conveyed to her in fee simple from and clear of any claim or encumbrance of the plaintiff to the whole or any part thereof.

"3. That the plaintiff E. W. Fall is entitled to a decree setting apart to him as his own separate property, free of any claim or incumbrance of the defendant, all that personal property heretofore described consisting of office furniture and fixtures, medical library, medical instruments and appliances now in his possession."

15.

That thereupon, having duly made its findings of fact and conclusions of law, and the court being fully advised in the premises, duly made and entered the following decree to-wit:

"It is therefore considered, ordered, adjudged and decreed by the court that the bonds of matrimony heretofore existing between the plaintiff and the defendant are now, at the prayer of said defendant, dissolved, cancelled, annulled set aside and held for naught.

"2. That the certain real estate heretofore belonging to the plaintiff and defendant, towit, the S. W. ¼ of Sec. 12, twp. 11 N range 7, in Hamilton County, Nebraska, being a farm in cultivation, together with the appurtenances thereto and the crops grown and growing thereon for the year 1895, be and the same is hereby set apart to the defendant Sarah S. Fall as her own separate property forever, free and unincumbered from any claim of the plaintiff thereto, and that said E. W. Fall is hereby ordered and directed by the court to convey all his right, title and interest in and to said real estate to said Sarah S. Fall within five days from the date of this decree.

"3. That the certain personal property consisting of household furniture, now in the possession of the defendant be and the same is hereby set apart to her as her own separate property forever, free and unincumbered from any claim of the plaintiff E. W. Fall.

"4. That the certain personal property hereinbefore described consisting of office furniture and fixtures, medical library, instruments and appliances, now in the possession of the plaintiff, be and the

same are hereby set apart to said E. W. Fall as his own separate property forever, free and clear of any claim or incumbrance of the plaintiff."

"5. It is further ordered, adjudged and decreed that neither said plaintiff nor said defendant shall contract any marriage for a period of six months from this date.

That each of the parties to this action shall pay his or her own costs and neither shall recover any costs from the other."

15

16.

That afterwards towit: on the 5" day of November, 1895, a duly certified copy of said decree was duly filed in the office of the County Clerk of Hamilton County, Nebraska, and by him duly recorded in volume R of Deed Records, at page 412.

17.

That afterward the said defendant herein and plaintiff therein, E. W. Fall prosecuted an appeal from the judgment of the said Superior Court of King County, State of Washington, so made and entered on the 5th day of October, 1895, to the Supreme Court of the State of Washington, and that afterwards on the 15th day of May, 1896, upon motion of the plaintiff herein and defendant therein, Sarah S. Fall, the said appeal was duly and regularly dismissed and the said judgment of the Superior Court of King County State of Washington, duly affirmed and said cause by the said Supreme Court of the State of Washington, was duly remanded to the Superior Court of King County, State of Washington and the remitt-er filed in the said Superior Court on the 15th day of June, 1896.

18.

That the said defendant herein and plaintiff therein E. W. Fall, failed neglected and refused to execute and deliver to the plaintiff the deed of conveyance for said property as in said decree directed, or at all, and that afterwards, and upon due notice to the said plaintiff therein and defendant herein, E. W. Fall, the said Superior Court of King County, Washington, on the 3rd day of July, 1896, duly appointed and constituted one W. T. Scott, a commissioner to make, execute and deliver to this plaintiff a deed in accordance with the decree of said court in said cause.

19.

That afterwards, towit: on the 3rd day of July 1896, the said W. T. Scott as commissioner, duly made and executed in pursuance to said decree of the Superior Court of King County, State of Washington, a deed for said property in words and figures as follows to-wit:

16 "This Indenture, made and entered into this 3rd day of July 1896, by and between W. T. Scott, a commissioner appointed by the Superior Court of King County, State of Washington, in the case of E. W. Fall *v.* Sarah S. Fall, No. 20136, party of the first part, and Sarah S. Fall of Seattle Washington, party of the second part:

Witnesseth: that the said party of the first part in conformity with an order made by the Superior Court of King County, State of Washington, in the above case, and for and in consideration of the sum of One Dollar, lawful money of the United States, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey and confirm unto the said party of the second part and to her heirs and assigns the following tract of land situated in Hamilton County, Nebraska: The southwest quarter (¼) of Section Twelve (12) Township Eleven (11) Range Seven (7) together with the appurtenances.

To Have and to Hold the said premises unto the said party of the second part and to her heirs and assigns forever.

In Witness Whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

W. T. SCOTT, [SEAL.]
Commissioner.

Signed, sealed and delivered in presence of
——— ———,
——— ———,

STATE OF WASHINGTON,
County of King, ss:

This is to certify that on this 3rd day of July 1896, before me John E. Humphries, a Notary Public in and for the State of Washington residing at Seattle, duly commissioned and sworn, personally came W. T. Scott commissioner above named, to me known to be the individual described in and who executed the within instrument as such Commissioner, and acknowledged to me that he signed and sealed the same as free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal, the day and year first above written.

JOHN E. HUMPHRIES,
Notary Public as Aforesaid.

17 20.

That afterwards the said deed was duly submitted to the Honorable T. J. Humes, Judge of the said Superior Court of King County, Washington, for examination and approval, who thereupon indorsed thereon

"Examined and approved by the court this 3rd day of July 1896.
T. J. HUMES, *Judge.*"

21.

That afterwards towit, on the 3rd day of July, 1896, the said W. T. Scott as commissioner, duly delivered the said deed to this plaintiff and the same was duly and regularly filed in the office of the Clerk of the Superior Court of King County, State of Washington.

22.

That after the making and entering of the said decree in the Superior Court of King County, State of Washington, the said defendant herein and plaintiff therein, E. W. Fall in fraud *to* the rights of this plaintiff and in contempt of said decree, with intent to cheat and defraud this plaintiff, and to defeat the execution and performance of said decree, made, executed and delivered to his brother, the defendant William H. Fall, without consideration, a pretended mortgage upon the land herein described.

23.

That at the time of the making and delivery of the said pretended mortgage, and at all times, the defendant William H. Fall, had full knowledge and notice of the rights of the plaintiff herein and of the pendency of said action and of the fraudulent and contemptuous intent of the defendant E. W. Fall, and accepted said pretended mortgage without consideration and with intent to aid, abet and assist the defendant E. W. Fall in defeating the execution of the said decree and for the purpose of cheating and defrauding the plaintiff herein of her right, title and interest in and to the said premises, and that the said pretended mortgage was afterwards, by the said William H. Fall, filed with the County Clerk, of Hamilton County, Nebraska, and recorded in book "R" at page 412, and that the same is a cloud upon plaintiff's title to the said land.

18

24.

That afterwards towit, on the 7th day of April 1896, the said E. W. Fall in fraud of the rights of this plaintiff and in contempt of the said decree of the Superior Court of King County, State of Washington, without consideration, and with intent to cheat and defraud this plaintiff, and to defeat the execution of the said decree, made, executed and delivered to his sister the defendant Elizabeth Easton a deed for the real property herein described, and that the said defendant Elizabeth Easton, in fraud of the rights of this plaintiff, and with intent to cheat and defraud this plaintiff and with full knowledge and notice of the making and entering of said decree, and with the sole and only purpose of aiding and abet-ing and assisting the defendant E. W. Fall, in resisting and defeating the execution of said decree, accepted the said deed and caused the same to be recorded in the office of the County Clerk of Hamilton County, Nebraska, in deed record "R" at page 555, and that the same constitutes a cloud upon plaintiff's title to the said land.

25.

That the defendant William H. Fall, claims a lien upon said real property herein described by virtue of said pretended and fraudulent mortgage, but that said mortgage is wholly void and without force and effect as against the rights of this plaintiff.

26.

That the defendant Elizabeth Easton, claims to be the owner of some right, title or interest in and to the said property by virtue of the

said pretended and fraudulent deed, but that said deed is wholly void as against this plaintiff and is without force and effect.

27.

That the defendants and each of them claim some interest in and to the said premises adverse to this plaintiff, but that any interest which they may have or claim to have is junior and inferior to the title of this plaintiff.

28.

That the plaintiff is in possession and occupancy of the said land hereinbefore described and has been in such possession since
19 October 23, 1895.

Wherefore, plaintiff prays:

1. That full faith and credit may be given to the judgment and decree of the Superior Court of King County, State of Washington.
2. That the title to said land may be quieted in plaintiff, and that the defendant-, and each of them, may be adjudged to have no right, title or interest in and to the said property either at law or in equity, and that the said pretended deed and mortgage may be declared null and void.
3. For all other proper and equitable relief.
4. For her costs and disbursements herein.

A. W. AGEE AND
JOHN WILEY,
Attorneys for Plaintiff.

STATE OF WASHINGTON,
County of King, ss:

I, Sarah S. Fall, being first duly sworn on oath depose and say: I am the plaintiff in the above entitled cause I have read the foregoing complaint, know the contents thereof, and the facts therein stated are true.

SARAH S. FALL.

Subscribed in my presence and sworn to before me this 8th day of March A. D. 1897.

[SEAL.] JOHN W. MOORE,
Notary Public in and for the State of Washington, Residing in Seattle.

20 I hereby undertake to pay all costs that may be adjudged against the plaintiff in this action.

J. W. HAWORTH.

The above security for costs approved by me this 27th day of March 1897.

J. B. CUNNINGHAM,
Clerk District Court.

Filed March 27th 1897.
J. B. CUNNINGHAM,
Clerk District Court.

And on the 11th day of May A. D. 1897, said cause came on for hearing in said court and the following ruling and order was made therein, to-wit:

In District Court of Hamilton County, Nebraska.

No. 1854.

SARAH S. FALL, Plaintiff,
vs.
EDMUND WEBSTER FALL ET AL., Defendants.

Now, towit, on this 11th day of May, 1897, this cause came on for hearing and the court on due examination of the files and processes herein, finds that due and legal service as required by law, has been had on all of the defendants herein and although time for answer has long since elapsed, yet the defendants Edmund Webster Fall, William H. Fall and Elizabeth Eastman have failed to answer or otherwise plead herein, and being three times solemnly called in open court, answer not, but are in default, and their default is hereby entered against them, and each of them."

And be it further known that thereafter, towit: On the 21st day of June, there was filed in the office of said Clark the separate answer of the said William H. Fall in words and figures following to-wit:

21 In the District Court of Hamilton County, Nebraska.

SARAH S. FALL, Plaintiff,
vs.
EDMUND WEBSTER FALL, WILLIAM H. FALL ET AL., Defendants.

Separate Answer of Wm. H. Fall.

Comes now William H. Fall, and for his own and separate answer to the plaintiff's petition says that he claims no interest in the subject matter of this suit, nor in the land described in said petition and that prior to the commencement of said action, he had executed, acknowledged and delivered a full release of the mortgage to him, mentioned in said petition.

Wherefore he prays that no costs be taxed against him in this cause.

WM. H. FALL.

Filed June 21st 1897.

J. B. CUNNINGHAM,
Clerk D. C.

And be it further known that on said 21st day of June, 1897, the following proceedings were had and done in said court, to-wit:

In the District Court of Hamilton County, Nebraska.

No. 1854.

SARAH S. FALL, Plaintiff,
vs.
EDMUND WEBSTER FALL ET AL., Defendants.

Now, towit, on this 21st day of June A. D. 1897, that being one of the days of the regular May 1897 term of this court, this cause came on for hearing on the motion of the defendant William H. Fall to set aside the default heretofore entered against him in this cause, and the court being fully advised in the premises orders that the default that was heretofore entered against the defendant William H. Fall, be and the same is hereby set aside and leave is given the said William H. Fall to file disclaimer herein.

22

And be it further known that thereafter towit, on the 30th day of September A. D. 1897, the following proceedings were had and taken in said cause and court, towit:

In the District Court of Hamilton County, Nebraska.

SARAH S. FALL, Plaintiff,
vs.
EDMUND WEBSTER FALL, WILLIAM H. FALL, and ELIZABETH EASTON, Defendants.

Now, towit, on this 30th day of September A. D. 1897, this cause having heretofore been submitted and taken under advisement by the court, came on for final determination, and the court being fully advised in the premises, finds by the answer of the defendant William H. Fall, that he claims no interest in or lien upon the real estate described in plaintiff's petition, and that he, in fact has no interest therein. The court further finds all the allegations of plaintiff's petition to be true and that neither of the defendants Edmund Webster Fall and Elizabeth Easton has any interest in or lien upon the premises in said petition described to-wit: The Southwest Quarter of Section Twelve (12) in Township Eleven (11) North, Range Seven (7) West of the Sixth Principal Meridian, in Hamilton County, Nebraska. That the plaintiff is the sole owner in fee simple of said premises and that full faith and credit should be given to the judgment of the Superior Court of Kings County, in the State of Washington as set forth in said petition.

It is therefore considered, adjudged and decreed, that full faith and credit be given to the judgment of the Superior Court of King County, in the State of Washington, in the case mentioned and described in said petition. That the plaintiff Sarah F. Fall, is the owner in fee simple title, of the Southwest quarter of section twelve (12) in township eleven (11) North, Range Seven (7) west of the

sixth Principal Meridian, in Hamilton County Nebraska, and that her title thereto be and the same is hereby quieted and confirmed and that neither of the said defendants Edmund Webster Fall, William H. Fall nor Elizabeth Easton has any right, title or interest in, or lien upon said premises nor any part thereof, and they are and each of them is hereby excluded from claiming any interest therein or lien thereon.

It is further ordered that the plaintiff pay the costs of this action taxed at $——.

And be it further remembered that thereafter *to* the regular September 1902 term of said court, to-wit: On the 24th day of September A. D. 1902, there was filed in the office of the Clerk of the District Court of said County an affidavit and Application in
23 the words and figures following, towit:

STATE OF NEBRASKA,
County of Hamilton, ss:

In District Court of said County.

SARAH S. FALL, Plaintiff,
vs.
EDMUND WEBSTER FALL, WILLIAM H. FALL, and ELIZABETH EASTIN, Defendants.

Affidavit and Application.

Elizabeth Eastin being first duly sworn deposes and says: I am one of the defendants above named: On September 30, A. D. 1897, and without other service of summons or notice of the pendency of said proceedings than by publication in a newspaper, judgment was rendered in the above entitled cause and court against affiant and the other above named defendants, all of which more fully appears from the records, files and proceedings in said cause in this court and which said records, files and proceedings are severally made parts hereof as fully as though set out at length herein.

Affiant further alleges that she had no knowledge or notice of the pendency of said proceedings and action until long after the rendition of said judgment.

Affiant further alleges that a long time before the filing of the petition of the said plaintiff in said action, this affiant became the owner in fee simple of an undivided one-half of the premises and real estate mentioned and described in plaintiff's petition and which said real estate and premises are the subject matter of this suit, and that said affiant has ever since been and now is the owner in fee simple of said undivided one-half of said premises; that affiant during all of said times has had and now has a full and complete defense to said action of the plaintiff and presents herewith her full answer to the petition of said plaintiff, which said answer is hereby

made a part hereof as fully as though extended at length herein.

24 Affiant prays that said judgment be opened and this affiant be let in to defend against said action.

ELIZABETH EASTIN.

Subscribed and sworn to by the said Elizabeth Eastin before me and in my presence this 24th day of September A. D. 1902.

[SEAL.] J. D. FERGUSON, JR.,
Notary Public.

My commission expires Oct. 17, 1907.

Filed Sept. 24th 1902.
FRED JEFFERS,
Clerk Dist. Court.

And now on the same day, towit, on the 24th day of September 1902, there was filed in the office of the Clerk of the District Court of said County, an answer of the said Elizabeth Eastin in said cause in the words and figures following, to-wit:

In the District Court of Hamilton County, Nebraska.

SARAH S. FALL, Plaintiff,
vs.
EDMUND WEBSTER FALL, WILLIAM H. FALL, and ELIZABETH EASTIN, Defendants.

Answer.

Comes now the above named defendant, Elizabeth Eastin and here shows to the court that the true and correct orthography of her name is Elizabeth Eastin.

For answer to the petition of the said plaintiff filed herein, this answering defendant by way of plea in bar to said petition shows to the court for cause appearing on the face of said petition, that said petition does not state facts sufficient to constitute a cause of action in favor of the said plaintiff and against this defendant, nor entitle the plaintiff to the relief prayed.

25 2. For a second and further defense to the pretended cause of action set forth in said petition, this answering defendant alleges that the pretended cause of action in said petition stated, did not accrue within five years before the commencement of this action.

3. This answering defendant further alleges that for cause appearing on the face of these proceedings, this court has not heretofore acquired jurisdiction over either the person of this answering defendant or the subject matter of this suit and that the judgment and decree heretofore entered in this cause is null and void.

4. For fourth and further defense to the pretended cause of action set forth in plaintiff's petition, this answering defendant admits that

the said plaintiff and the defendant, Edmund Webster Fall, obtained title to the real estate mentioned and described in plaintiff's petition, towit, The South West Quarter of Section Twelve (12) in Township number Eleven (11) North, Range number seven (7) west of the Sixth Principal Meridian in said Hamilton County, Nebraska, by the same and a single conveyance, the said plaintiff, Sarah S. Fall and the said defendant Edmund Webster Fall, each acquiring an undivided one-half (½) interest in fee in and to said premises, and that said defendant Edmund Webster Fall, took said title in the name of Edmund Webster Fall.

This answering defendant further admits that her co-defendant, Edmund Webster Fall, in the name however of E. W. Fall, made, executed and delivered to their co-defendant William H. Fall, a mortgage deed covering his interest in said real estate, which said mortgage was in all respects duly and fully made, executed and delivered on the day of its date, towit: May 24, 1895, and was on the 10th day of January, 1896, duly filed for record in the office of the county clerk of said Hamilton County, Nebraska, and by him duly recorded in Book 38 at page 217 of the mortgage records of said county.

This answering defendant further admits that on the 7th day of April 1896, the said defendant Edmund Webster Fall, in the name however of E. W. Fall, duly made, executed and delivered to this answering defendant his deed of conveyance bearing said date, whereby he conveyed to this answering defendant an undivided one-half interest in fee simple in and to said real estate, and which said deed was on the 11th day of April 1896, duly filed for record, in the office of the County Clerk of said Hamilton County Nebraska,
and by him duly recorded in the deed records of said county
26 in *in* Book "R" at page 555 thereof, and that this answering
defendant Elizabeth Eastin, is the owner of a right, title and interest in and to said lands and real estate to-wit, an undivided one-half interest in fee simple by virtue of said deed and alleges that said plaintiff has no right, title or interest in and to said one-half interest in fee simple owned by this answering defendant.

This answering defendant further answering said petition denies each and every allegation therein contained, save and except as the same are in express terms admitted in this answer.

5. For a fifth and further answer to said petition of the said plaintiff, this answering defendant alleges:

That at Aurora, Nebraska, on September 8, 1893, the said defendants Edmund Webster Fall and William H. Fall, the former, however, in the name of E. W. Fall, duly made, executed and delivered to this answering defendant, their certain promissory note bearing that date, whereby for value received, they promised on the 8th day of September 1894, to pay to the order of this defendant the sum of $1000.00 with interest thereon at ten per cent. (10%) per annum from said date until paid. That the true and actual consideration for making, execution and delivery of said note was the sum of $1000.00, lawful money of the United States, then in hand paid and loaned by this answering defendant to said Edmund Webster

Fall, and that the said William H. Fall signed said note as surety and received no part of said consideration.

This answering defendant further alleges, that on the 24th day of May, 1895, the said Edmund Webster Fall, being unable to pay said note, or any part thereof, for the purpose of securing the ultimate payment of the same and to indemnify and save harmless his said surety and co-maker of said note, did make, execute and deliver to his co-defendant, said William H. Fall, his note bearing that date whereby for value received he promised one year after date of said note to pay to the said William H. Fall, the sum of $1200.00 with interest thereon at eight per cent. (8%) per annum payable monthly and to secure the payment of said note for $1200.00 and of said $1000.00 note, the said Edmund Webster Fall, in the name of E. W. Fall, duly made, executed and delivered to his co-defendant William H. Fall, his mortage deed of that date, whereby he conveyed to said William H. Fall, all right, title and interest of said Edmund Webster Fall in and to said lands and tenements de-
27 scribed in plaintiff's petition to wit, said undivided one-half thereof, which said mortgage deed was in all respects duly signed, witnessed, acknowledged and was on the 10th day of January, 1896, duly filed for record in the office of the County Clerk of Hamilton County, Nebraska, and by him duly recorded in the mortgage records of said County in Book 38 at page 217 thereof and being the same mortgage deed heretofore mentioned and described and also referred to in plaintiff's petition.

This answering defendant further alleges that said note for $1000.00 in favor of this answering defendant, being wholly unpaid and long past due and said note and mortgage for $1200.00 being also wholly unpaid, on the 7th day of April, 1896, the said Edmund Webster Fall, in the name however of E. W. Fall, being unable to pay or discharge said indebtedness and having no property out of which to realize the amount thereof other than said real estate hereinbefore described and pledged for the payment of said debt as hereinbefore alleged for the purpose of satisfying and discharging said debt to this answering defendant and releasing his said surety, William H. Fall, from obligation of said note, made and entered into an agreement with this answering defendant whereby the said Edmund Webster Fall agreed to convey his said undivided one-half interest in and to said premises to this answering defendant and thereupon in pursuance and consideration thereof, duly made, executed and delivered to this answering defendant his said warranty deed bearing said last mentioned date, whereby he duly conveyed to this answering defendant his said undivided one-half of said premises in fee simple as hereinbefore alleged, which said warranty deed was in all respects duly made, witnessed, acknowledged and delivered to this answering defendant, who accepted the same and caused the same on the 11th day of April 1896, to be duly filed for record in the office of the County Clerk of said Hamilton County, Nebraska, and by him duly recorded in the deed records of said county in book "R" at page 555 thereof.

This answering defendant further alleges that at the date of said

conveyance from the said Edmund Webster Fall to this answering defendant, the amount due to this answering defendant from said Edmund Webster Fall and evidenced by said note, was the sum of $1258.33 being at that time an amount equal to the full, fair and actual value of said premises conveyed by the said Edmund Webster Fall to this answering defendant, and that the only consideration received by her for the surrender and cancellation of said indebtedness was the said conveyance.

28 This answering defendant further alleges that in making said loan of $1000.00 to said Edmund Webster Fall, and in the whole of each and every transaction in this answer mentioned and included the taking of said notes and each of them, of said mortgage and warranty deeds, this answering defendant acted in perfect good faith and in the due and ordinary course of the execution of the agreements herein set forth and none other.

Wherefore this answering defendant prays that the petition of the plaintiff be dismissed: that this answering defendant go hence without day: that the title in and to an undivided one-half of said premises and real estate be quieted and confirmed in this answering defendant: that she recover her costs herein expended and for such other, further or different relief as may be just and equitable.

HAINER & SMITH,
Attorneys for Elizabeth Eastin, Defendant.

STATE OF NEBRASKA,
County of Hamilton, ss:

Elizabeth Eastin being first duly sworn deposes and says: I am the defendant who makes the above and foregoing answer: that I have read the same and that the statement of facts therein contained is true as I verily believe.

ELIZABETH EASTIN.

Subscribed and sworn to by the said Elizabeth Eastin before me and in my presence this 24th day of September 1902.

[SEAL.] J. D. FERGUSON, JR.,
Notary Public.

My commission expires Oct. 17, 1907.
Filed Sept. 24th, 1902.

FRED JEFFERS,
Clerk Dist. Court.

29 And thereafter, towit, on the 25th day of September 1902, there was filed in the office of the Clerk of the District Court of said County, a notice and certified return of service thereof in the words and figures following towit:

STATE OF NEBRASKA,
County of Hamilton, ss:

In District Court of said County.

SARAH S. FALL, Plaintiff,
vs.
EDMUND WEBSTER FALL, WILLIAM H. FALL, and ELIZABETH EASTIN, Defendants.

Notice.

To Sarah S. Fall, plaintiff:

You are hereby notified that on the 11th day of November A. D. 1902, that being the date to which said court has been adjourned, or as soon thereafter as the application can be heard, I will apply to the above entitled court to have the judgment heretofore rendered in this cause opened up and that I be let in to defend said action.

You are further notified that I have on this 24th day of September A. D. 1902, duly caused to be filed in the above entitled cause and court my full answer to the petition heretofore filed by you in this cause and also my affidavit and application praying that I may be let in to defend said action.

Said petition and affidavit are hereby made parts of this notice as fully as though extended at length herein.

Dated this September 24, A. D. 1902.

ELIZABETH EASTIN,
By HAINER & SMITH,
Her Attorneys.

30 STATE OF NEBRASKA,
County of Hamilton, ss:

I, the undersigned Sheriff of said county do hereby certify and return, that I received the above and foregoing notice on the day of its date, September 24, 1902, and on the same day I duly served the same on the above named Sarah S. Fall, plaintiff by delivering into her hands a true and certified copy thereof.

J. J. KLUMB,
Sheriff of Hamilton County, Nebraska.

Filed Sept. 25, 1902.
FRED JEFFERS,
Clerk Dist. Court.

And be it further remembered that thereafter towit: on the 27th day of April A. D. 1903, the same being one of the days of the regular April 1902, term of said court, before B. F. Good, one of the Judges, of said Court, the following proceedings were had and done in said cause, towit:

In the District Court of Hamilton County, Nebraska.

SARAH S. FALL, Plaintiff,
vs.
EDMUND WEBSTER FALL, WILLIAM H. FALL, and ELIZABETH EASTIN, Defendants.

Journal Entry.

Be it known that this cause came on for hearing this 27th day of April, A. D. 1903, the same being one of the days of the regular April 1903, term of this court, upon the duly verified application of Elizabeth Eastin, to have this cause and the judgment heretofore rendered herein, opened and that she be let in to defend; on consideration of said application and the evidence and being duly advised in the premises, the court finds that each and every allegation contained in said application of the said Elizabeth Eastin, defendant, is true and that the same entitled her in law to have this cause and the judgment heretofore rendered opened and that she be let in to defend.

The court further expressly finds and it has been made to appear to the satisfaction of the court by affidavit, and by other evidence, that during the pendency of this action, the said Elizabeth Eastin had no actual notice thereof in time to appear in court and make her defense and that the judgment herein was rendered against the said Elizabeth Eastin, without other service than by publication in a newspaper and that the application of the said Elizabeth Eastin to have said judgment opened and that she be let in to defend was made within five years after the date of said judgment.

31 It is therefore considered by the court that the said Elizabeth Eastin, having paid all costs accrued herein, that said judgment heretofore rendered in this cause be and the same is hereby opened and the said defendant, Elizabeth Eastin be and she is hereby let in to defend said action.

And thereupon the plaintiff Sarah S. Fall, asks leave to amend her petition heretofore filed in this cause by interlineation as follows: "and has been in such possession since October 25, 1895;" on consideration whereof said leave to amend said petition by interlineation is hereby given said plaintiff, to which ruling the said Elizabeth Eastin excepts, and the said plaintiff excepts to the order, ruling and decision of the court opening said judgment.

And thereupon the defendant, Elizabeth Eastin, elected in open court to stand upon her answer filed in this cause and it is thereupon ordered that the plaintiff be and she is hereby given leave to reply by May 11, 1903, and that this cause be and the same is set for trial on June 9, 1903, at nine o'clock A. M. of said day.

And be it further remembered that thereafter, to-wit, on May 11, 1903, there was filed in the office of the Clerk of said Court a reply of the said Sarah S. Fall in the words and figures following, towit:

In the District Court of Hamilton County, Nebraska.

SARAH S. FALL, Plaintiff,

vs.

EDMUND WEBSTER FALL, WILLIAM H. FALL, and ELIZABETH EASTIN, Defendants.

Reply.

Comes now the plaintiff and for her reply to the answer of Elizabeth Eastin states:

First. This plaintiff denies each and every allegation in the said defendant's answer except such as are herein expressly admitted.

Second. Plaintiff admits that defendant Edmund Webster Fall, under the name of E. W. Fall, made, executed and delivered to William H. Fall, a mortgage deed upon the land described in the said answer, and that said mortgage deed was afterward filed with the County Clerk of Hamilton County, Nebraska, on the 10th day of January 1896, and recorded by said County Clerk in the mortgage records of said County; that said Edmund Webster Fall, in the name of E. W. Fall, on the 7th day of April 1896, made,
32 executed and delivered to the defendant Elizabeth Eastin a deed for the real property described in the petition and answer herein, and that she accepted said deed and caused the same to be recorded in the office of the County Clerk of Hamilton County, Nebraska, in deed record "R" on page 555.

Third. Further replying plaintiff states, that the said mortgage and the said deed were made without consideration and with intent to cheat, hinder and defraud this plaintiff, and that the said William H. Fall, and the said defendant Elizabeth Eastin in fraud of the rights of the plaintiff and with intent to cheat and defraud, this plaintiff, and with full knowledge and notice of the right and interest of the plaintiff in said property and said full notice, that all the right, title and interest of the said Edmund Webster Fall in said land had terminated and had been transferred to the plaintiff, accepted said mortgage and said deed with the sole and only purpose of aiding and abetting and assisting said Edmund Webster Fall in defrauding said plaintiff.

Fourth. That at the time of the acceptance of said mortgage and at the time said Elizabeth Eastin accepted said deed under which she now claims title and ever since that time the plaintiff was, and now is, in the actual, open, notorious, exclusive, continuous and adverse possession of said land, claiming absolute title thereto in fee simple. That the said William H. Fall, and defendant Elizabeth Eastin were not purchasers for value, and without notice of the said Edmund Webster Fall, of the said land, but they took their various respective conveyances with full knowledge of all the right, title and interest in and to said land. That said Elizabeth Eastin has no right, title or interest in and to said land or any part thereof.

Fifth. That the said William H. Fall, before the filing of the said answer of the said defendant Elizabeth Eastin, had long since filed his disclaimer in the suit, disclaiming and admitting that he had no right, title or interest in or to said premises.

Sixth. For further reply to defendant's answer, plaintiff shows to the court that on or about the 30th day of September A. D.
33 1897, the said District Court of Hamilton County, Nebraska, duly found in this suit, that all the allegations of plaintiff's petition to be true, and that none of the defendants herein had any interest in or lien upon the said southwest quarter of section 12 in township 11 north, of range 7 west of the 6th Principal Meridian, in Hamilton County, Nebraska, that the plaintiff was the sole owner in fee simple of said premises, and the said court thereupon decreed that the plaintiff was the owner in fee simple of said described lands, and quieting and confirming her said title against the defendants and each of them, said defendants and each of them long before the rendering of said decree knew of the pendency of the suit, that this matter is now *res adjudicata*, and defendants and each of them are now estopped from attacking said decree, a copy of said decree is hereby made a part of this reply as follows:

Now, towit, on the 23rd day of September A. D. 1897, this cause having heretofore been submitted and taken under advisement of the court, came on for final determination, and the court being fully advised in the premises finds by the answer of the defendant William H. Fall, that he claims no interest in or lien upon the real estate described in plaintiff's petition, and that he in fact has no interest therein. The court further finds all the allegations of plaintiff's petition to be true, and that neither of the defendants Edmund Webster Fall and Elizabeth Eastin has any interest in or lien upon the premises in said petition described to-wit: The southwest quarter of section 12 in township 11 north, range 7 west of the 6th P. M. in Hamilton County, Nebraska. That the plaintiff is the sole owner in fee simple of said premises and that full faith and credit shall be given to the judgment of the Superior Court of King County in the State of Washington as set forth in said petition.

It is therefore considered, adjudged and decreed that full faith and credit be given to the judgment of the Superior Court of King County in the State of Washington in the case mentioned and described in said petition. That the plaintiff Sarah S. Fall is the owner in fee simple title, of the Southwest Quarter of section 12 township 11 range 7 west of the 6th P. M. in Hamilton County, Nebraska and that her title thereto be, and the same hereby is, quieted and confirmed and that neither of the said defendants Edmund Webster Fall, William H. Fall nor Elizabeth Eastin has any right, title or interest in or lien upon said premises nor any part thereof and they are and each of them is hereby excluded from claiming any interest therein or lien thereon.

It is further ordered that the plaintiff pay the costs of this action taxed at $——.

Wherefore plaintiff renews the allegation and prayers of her peti-

tion and asks such other and further relief as in equity and good conscience may be required.

SARAH S. FALL,
By STARK & GROSVENOUR AND
THOMAS H. MATTERS,
Attorneys.

34 STATE OF NEBRASKA,
Hamilton County, ss:

Sarah S. Fall, being by me first duly sworn upon her oath deposes and says she is the plaintiff in the above entitled cause, that she has read the foregoing reply and the contents thereof are true as she verily believes.

SARAH S. FALL.

Subscribed and sworn to before me this 11th day of May A. D. 1903.

[SEAL.] FRED JEFFERS,
Clerk D. C.

Filed May 11th, 1903,
FRED JEFFERS,
Clerk District Court.

And be it known that hereafter, towit, on the 5th day of December A. D. 1903, the following proceedings were had and done in said cause and court before Hon. S. H. Sornborger, one of the Judges of said Court, to-wit:

In the District Court of Hamilton County, Nebraska.

SARAH S. FALL, Plaintiff,
vs.
EDMUND WEBSTER FALL, WILLIAM H. FALL, and ELIZABETH EASTIN, Defendants.

Journal Entry.

Be it known that this cause came on for hearing this 5th day of December A. D. 1903, the same being one of the days of the regular September A. D. 1903, term of this court, on the petition of the said plaintiff the answer of the defendant, Elizabeth Eastin, and the reply thereto, of the plaintiff, and the taking of the testimony was entered upon and the trial proceeds, but is not concluded for want of time and this cause is thereupon adjourned for further hearing until the coming in of court on December 7th 1903, at two o'clock P. M. of said day.

35 And be it further remembered that thereafter, towit: on the 7th day of December A. D. 1903, the following proceedings were had and done in said cause and court, towit:

In the District — of Hamilton County, Nebraska.

SARAH S. FALL, Plaintiff,
vs.
EDMUND WEBSTER FALL, WILLIAM H. FALL, and ELIZABETH EASTIN, Defendants.

Journal Entry.

Be it known that this cause came on for hearing this 7th day of December A. D. 1903, the same being one of the days of the regular September A. D. 1903, term of this court on the proceedings and evidence in this cause and the trial of this cause was resumed but is not concluded for want of time and this cause is thereupon adjourned for further hearing until the coming in of court on December 8th 1903, at nine o'clock A. M. of said day.

And be it further remembered that on the 8th day of December A. D. 1903, the following proceedings were had and done in said cause and court before S. H. Sornborger one of the Judges of said court, to-wit:

In the Fifth Judicial District Court within and for Hamilton County, Nebraska.

SARAH S. FALL, Plaintiff,
vs.
EDMUND WEBSTER FALL, WILLIAM H FALL, and ELIZABETH EASTIN, Defendants.

Decree.

36 And now on this 8th day of December A. D. 1903, that being one of the days of the regular September 1903, term of this court, the trial of this cause was resumed pursuant to an adjournment and the taking of testimony was concluded, and this cause was submitted to the court, upon the petition of the plaintiff, the answer of the defendant Elizabeth Eastin, and the reply of the plaintiff thereto, the evidence taken in open court and the argument of counsel, and the court being fully advised in the premises finds as follows:

First. The court finds all the issues heretofore joined in this action in favor of the plaintiff and against the defendant, Elizabeth Eastin.

Second. The Court finds that on the 10th day of October A. D. 1876, at Thorntown, Indiana, the plaintiff and defendant, Edmund Webster Fall, intermarried as in plaintiff's petition set forth and that during the existence of the marriage relation existing between the plaintiff Sarah S. Fall the defendant Edmund Webster Fall, while living in the State of Nebraska, by their joint efforts, accumulations and earnings acquired jointly and by the same conveyance the title to the South West Quarter of section 12 in township 11

north, range 7, west of the 6th Principal Meridian, in Hamilton County, Nebraska.

Third. The court further finds, that in the year 1899, the plaintiff and defendant, Edmund Webster Fall, removed from the State of Nebraska, to Seattle, King County, State of Washington, where they continued to reside as husband and wife until sometime in the early part of the year 1895, when they separated, and on the 27th day of February, 1895, both of said parties being citizens and residents of said King County, Washington, the said Edmund Webster Fall instituted an action in the Superior Court of King County, Washington, the said court being a court of record of general jurisdiction, said suit was against the plaintiff for a divorce from the bonds of matrimony and for partition of the property of said Sarah S. Fall and Edmund Webster Fall, both real and personal, and especially the South West Quarter of section 12, township 11 range 7,
west of the 6th Principal Meridian in Hamilton County,
37 Nebraska; that in said action the plaintiff herein filed her answer and cross-petition asking among other things for a divorce from the bonds of matrimony and a partition and settlement of the property of the parties to said suit.

Fourth. The court further finds that the Superior Court of King County Washington, under and by virtue of the laws of the State of Washington, then in force, and the construction placed thereon by the Supreme Court of said state, was fully authorized to make the partition and settlement of the property of said parties, in said suit and also to award a decree of divorce.

Fifth. The court further finds, that in pursuance to the authority conferred by the statute of the State of Washington, and the construction placed thereon by the Supreme Court of said state, said Supreme Court of the State of Washington in and for the County of King, on the 5th day of October A. D. 1895, ordered, adjudged and decreed among other things, that the Southwest quarter of section 12 township 11 north of range 7 west of the 6th Principal meridian with the appurtenances thereto, and the crops grown and growing thereon for the year 1895, be set apart to Sarah S. Fall as her own separate property, free and unincumbered from any claim of the said Edmund Webster Fall, thereto and directed the said Edmund Webster Fall to convey all his right, title and interest in and to said real estate to Sarah S. Fall.

Sixth. The court further finds that on October 23rd, 1895, the plaintiff Sarah S. Fall took absolute possession of said land through her agent John W. Haworth, and from that date until the present time she has remained in open notorious, exclusive, continuous, adverse possession of said premises.

Seventh. The court further finds that on the 7th day of April 1896, the defendant Edmund Webster Fall, in fraud of the rights of the plaintiff and in contempt of said decree with intent to cheat and defraud Sarah S. Fall and to defeat the execution and performance of said decree, and while he held the title to said premises under the
terms of said decree in trust for Sarah S. Fall, made, executed
38 and delivered to his sister the defendant herein answering, Elizabeth Eastin, without consideration a deed for the prop-

erty heretofore described, and the defendant Elizabeth Eastin in fraud of the rights of the plaintiff, and with intent to cheat and defraud the plaintiff, and with full knowledge and notice of the making and entering of said decree, and with full knowledge of the plaintiff's possession of said premises, and with the purpose of aiding, abetting and assisting, Edmund Webster Fall, in resisting and defeating the execution of said decree, accepted said deed and caused the same to be recorded in the office of the County Clerk of Hamilton County, Nebraska, in deed record "R" at page 555, and that the same constitutes a cloud upon the plaintiff's title to said real estate.

Eighth. The court further finds, that the defendant Elizabeth Eastin, has no equity in said land, and that her cross complaint should be dismissed and the deed to said premises cancelled and held for naught.

It is therefore ordered, adjudged and decreed by this court that full faith and credit be given the decree of the Superior Court of Washington in and for the County of King in the suit of Edmund Webster Fall *vs.* Sarah S. Fall, mentioned in plaintiff's petition, that the deed of Edmund Webster Fall to Elizabeth Eastin, dated, April 7th, 1896, and recorded in deed record "R" at page 555 purporting to convey the South West Quarter of section 12 in township 11 north, range 7 in Hamilton County, Nebraska, be cancelled, set aside and held for naught; that the title to said premises be quieted and confirmed in the plaintiff Sarah S. Fall, and that this decree stand as a conveyance of the interest of the defendants in and to the said premises of the plaintiff, and that the defendant Elizabeth Eastin pay the costs of this suit taxed at $ ——, and execution is awarded therefor.

To all of which findings and decree the defendant Elizabeth Eastin duly excepts.

Wherefore, the defendant Elizabeth Eastin moves the court for a new trial, which motion is overruled and 40 days is allowed the defendant Elizabeth Eastin, from the rising of this court to prepare and present her bill of exceptions, and upon request of said Elizabeth Eastin, for leave to file a supersedeas, the court doth grant said request and fixes the amount of said bond in the sum of $250.00.

S. H. SORONBERGER, *Judge*.

And be it further remembered that on the 10th day of December 1903, there was filed in the office of said clerk an undertaking and bond of the said Elizabeth Eastin in the words and figures following, to-wit:

In the District Court of Hamilton County, Nebraska.

SARAH S. FALL, Plaintiff,
vs.
EDMUND WEBSTER FALL, WILLIAM H. FALL, and ELIZABETH EASTIN, Defendants.

Supersedeas Bond.

We, Elizabeth Eastin, as principal, and William H. Fall, as surety are held and firmly bound unto Sarah S. Fall, the above named plaintiff, in the penal sum of $250.00 for the payment of which well and truly to be made, we jointly and severally bind ourselves, our heirs, executors and administrators.

39 The conditions of this obligation is such that whereas, the said Elizabeth Eastin has appealed to the Supreme Court of the State of Nebraska from the decree of said District Court in the above entitled cause rendered and entered on the 8th day of December A. D. 1903, dismissing the cross-petition and answer of Elizabeth Eastin, defendant herein, and quieting and confirming the title to the lands described in the pleadings in this cause in the said plaintiff, Sarah S. Fall, and that the said defendant Elizabeth Eastin pay the costs of this action taxed at $—— and said court has fixed the amount of a bond to be given for the purpose of superseding said appeal in the sum of $250.00.

Now if the said Elizabeth Eastin shall prosecute such appeal without delay and abide the decree rendered by the Supreme Court of the State of Nebraska in the said cause, then this obligation is to be void but otherwise to remain in full force and effect.

ELIZABETH EASTIN.
WILLIAM H. FALL.

The execution of the foregoing bond and the sufficiency of the surety thereon are approved by me at Aurora, Nebraska, this 10th day of December A. D. 1903.

[SEAL.]

FRED JEFFERS,
Clerk of the District Court of Hamilton County, Nebraska.

Filed Dec. 10, 1903.
FRED JEFFERS,
Clerk Dist. Court.

And be it further remembered that on the 4th day of February A. D. 1904 there was filed in the office of said Clerk of District Court the original Bill of Exceptions in said cause.

STATE OF NEBRASKA,
Hamilton County, ss:

I, Fred Jeffers, Clerk of the District Court of said County of Hamilton, do hereby certify that the foregoing is a full, true and

perfect transcript of the record in the above entitled action as the same is on file and of record in my office, including the final judgment and decree rendered therein, except that the foregoing Bill of Exceptions is the original Bill of Exceptions in said cause as the same was filed in my office.

[SEAL.]

FRED JEFFERS,
Clerk of the District Court of
Hamilton County, Nebraska.

Fees for transcript $11.25, paid by Hainer & Smith, Atty. for Elizabeth Eastin.

[Endorsed:] 13737. Transcript. Supreme Court of Nebraska. Filed May 12, 1904 Lee Herdman, Clerk.

40–43 And afterwards, towit, on the 21st day of May, 1904, there was filed in the office of the Clerk of said Supreme Court, a certain Bill of Exceptions, in the words and figures following, towit:

* * * * * * *

44 SARAH S. FALL, called as a witness on behalf of the plaintiff, and being first duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. MATTERS:

Q. You may state your name.
A. Sarah S. Fall.
Q. Where do you reside?
A. Aurora, Nebraska.
Q. How long have you resided in Aurora, Nebraska.
A. I have lived here two different times, the last time I came back in the fall of 1898.
Q. You are the plaintiff in this suit?
A. Yes sir.
Q. Are you acquainted with Edwin Webster Fall, William H. Fall and Elizabeth Easton?
A. Yes sir.
Q. You may state what relation if any you were to Edwin Webster Fall?
A. He was my husband.
Q. When were you married?
A. In Thorntown Indiana.
Q. When?
A. 10″ of October 1876.
Q. How long did you live in Indiana?
A. After we were married?
45 Q. Yes.
A. We didn't live there at all, we were married and came right away.
Q. Where did you go at that time?

A. We went to Iowa.

Q. Are you acquainted with the South west quarter of section 12-11-7 Hamilton County, Nebraska?

A. Yes sir.

Q. How did you obtain that property you and your husband E. W. Fall?

Mr. SMITH: That is objected to as incompetent, irrelevant and immaterial and not the best evidence, and for the further reason that the facts stated in the petition of the plaintiff are not sufficient to constitute a cause of action in favor of the plaintiff and against the defendant Elizabeth Easton.

Objection overruled.

Defendants except.

A. By our joint efforts.

Mr. SMITH: The defendants move the court to strike out the answer for the reason that it is a conclusion of the witness and not a statement of facts.

Motion overruled.

Defendants except.

—. Shall I go into details?

Q. Yes.

A. Well, we landed in Nebraska, we had a wagon and a team and that is all the property we had, we had no money, we had just 50¢ when we landed here to stay, in Harvard, and my husband
46 went to working at his trade, and he worked that summer and in the fall 1878 he rented a farm, and we went onto it and raised a crop the next year, in 1879 and we had a splendid crop, and then we came over into Hamilton county and he bought a farm, and I stayed on the farm and boarded the hands, and he worked off and on the farm, but mostly at his trade, and we saved up $200.00 and he paid it on this farm and he assumed a mortgage of $574.00 and we afterwards worked on the farm and paid that off, we moved on the farm a year later than that.

(By the COURT:)

Q. You moved on the farm in 1879?

A. In February of the next year 1880.

Q. How long did you reside in Nebraska at that time?

Mr. HAINER: That is objected to as irrelevant and immaterial.

Objection overruled.

Exception.

A. Until 1889.

Q. Where did you go then?

A. We went to Seattle Washington.

(COURT.)

Q. Did you live on this land all this time?

A. Not all of the time, we built a house in Aurora, after living on the farm three or four years, we built a house where W. H. Fall

now lives and that was our home until we went to Seattle. We spent sometime in Chicago, but our home was here.

Q. How long did you reside together as husband and wife in Seattle?

A. Well, from 1889 until 1895.

47 Q. About the first of January?

A. Yes sir.

Q. What happened at that time?

A. Then he made proceedings for divorce.

Q. You separated then?

A. Yes sir.

Q. When did he institute proceedings for divorce?

Mr. HAINER: That is objected to as incompetent, irrelevant and immaterial, and not the best evidence.

Objection sustained.

Exception.

Q. When did you return to Nebraska?

A. In 1898 in the fall.

Q. And you have resided here from that time until the present?

A. Yes sir.

Q. Has Mr. Fall lived with you since that time?

A. No sir.

Q. You never resided together since about the first of January 1895?

A. No sir.

Q. Who has had possession and control of this property from that time until the present?

Mr. HAINER: That is objected to as incompetent, irrelevant and immaterial under the issues in the case and the facts stated in the petition are not sufficient to constitute a cause of action in favor of the plaintiff and against the defendant Elizabeth Easton.

Objection overruled.

Exception.

A. I have.

48 Q. You have collected the rents and profits?

A. I have through my agents.

Q. Who was your agent when you lived in Washington?

A. My brother.

Q. What is his name?

A. John Hayworth.

Q. Did you give him a power of attorney?

A. Yes sir.

Q. You may examine the paper I now hand you marked Exhibit "A" and state if you have ever seen that before?

A. Yes sir.

Q. Whose signature is attached to this paper?

A. My own.

Q. Is that your handwriting?

A. I think so.

Q. State if the John Hayworth mentioned in this paper is your brother.

A. Yes sir.

Q. And this was signed at the time it was dated, October 23rd 1895.

A. Yes sir.

Mr. MATTERS: I now offer in evidence Exhibit "A."

Mr. HAINER: That is objected to as incompetent irrelevant and immaterial and not relating to any issue in this case.

Objection sustained.

Exception.

Exhibit "A" which is offered and rejected is set forth herein at page 6.

49 Ex. A. Dec. 4/03. O. P. H.

Know All Men By These Presents, That I, Sarah S. Fall, do hereby make, constitute and appoint, John W. Haworth my true and lawful attorney in my place and stead to manage and control, to let, lease and demise and to collect rents now due or to become due upon my farm, situate in Hamilton County, Nebraska, and particularly described as follows, to-wit: The South west one-fourth of Section (12) township (11) range (7) west of the 6th Principal Meridian and to take, receive, sell and dispose of the grain, hay and feed grown, now growing or to be grown upon the said farm and to institute and maintain any and all actions at law or in equity necessary for the collection of the said rents, uses and profits of the said farm against any and all persons whomsoever as fully as might be done by me, if personally present, giving and granting unto my said attorney full power and authority in the premises, hereby ratifying and confirming anything that my said attorney may lawfully do by virtue of these presents.

In Testimony whereof I have hereunto set my hand and seal this 23rd day of October 1895.

SARAH S. FALL. [SEAL.]

STATE OF WASHINGTON,
County of King, ss:

This is to certify that on this 23rd day of October 1895, before me the undersigned, a Notary Public, in and for the State of Washington, duly commissioned and sworn, personally came Sarah S. Fall, to me known to be the person who executed the foregoing instrument and acknowledged to me that she executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my name and affixed my notarial seal the day and year in this certificate first written.

[SEAL.] JOHN F. BERNARD,
Notary Public in and for the State of Washington, Residing at Seattle.

Exhibit "A" referred to on page 5 hereof.

50 Q. Who collected the rent from the time you returned to Nebraska until the present time?

Mr. HAINER: That is objected to as incompetent, irrelevant and immaterial and not relating to any issue in this case.
Objection overruled.
Exception.

A. My brother has, and then afterwards Mr. Shenberger.
Q. For whom?
A. For myself.
Q. Was there any encumbrance upon this land in 1895 when you took possession of it?

Mr. HAINER: That is objected to as incompetent, irrelevant and immaterial and not relating to any issue in this case, and for the further reason that the petition of the plaintiff does not state facts sufficient to constitute a cause of action in favor of the plaintiff and against the defendant.
Objection overruled.
Exception.

A. Yes sir, there was a mortgage of $1,000.00.
Q. Has that been paid?

Mr. HAINER: That is objected to as incompetent irrelevant and immaterial and not relating to any issue in the case and for the further reason that the petition of the plaintiff does not state facts sufficient to constitute a cause of action in favor of the plaintiff and against the defendant.
Objection overruled.
Exception.

A. Yes sir, it has been paid.
Q. Who paid it?
A. I did.

51 Q. Has there been any taxes paid upon the premises since you took possession of it in 1895?

Mr. HAINER: That is objected to as incompetent irrelevant and immaterial and not relating to any issue in the case, and for the further reason that the petition of the plaintiff does not state facts sufficient to constitute a cause of action in favor of the plaintiff and against the defendant.
Objection overruled.
Exception.

A. Yes sir. I paid all of the taxes, or through my agents. My brother sometimes tended to paying the taxes for me, as my agent.
Q. Has there been any improvements placed upon the premises from that time to the present?

Mr. HAINER: That is objected to as incompetent irrelevant and immaterial, and as not relating to any issue in the case, and for the further reason that the petition of the plaintiff does not state facts

sufficient to constitute a cause of action in favor of the plaintiff and against the defendant.

Objection overruled.

Exception.

A. Yes sir. I have built a granary out on the farm, and I had the barn rebuilt, and I have had quite an expenses on the house. I have had a tin roof put on, and the shingle arranged, and the windows fixed, and quite a little improvement on the inside and something done about the foundation.

Q. Any fencing done on the farm?

A. No sir, I think not.

Q. Has anyone interfered with you in any way concerning
52 your possession of this land?

Mr. SMITH: That is objected to as incompetent irrelevant and immaterial and calling for the opinion of the witness and not for any facts.

Objection overruled.

Exception.

A. They have not.

Q. Has any demand been made of you for possession of the premises by anyone, or for any part of it from the time you took possession of it in 1895 until the present time?

A. No sir.

Q. Has anyone demanded any rent from you from that time up until the present?

A. No sir, not until Mr. Hainer came just before the beginning of this suit, that was the second or third day of July a year ago.

Q. 1902?

A. Yes sir, I think so.

Q. Are you acquainted with Mrs. Eastin?

A. Yes sir.

Q. What relation is she to E. W. Fall?

A. His sister.

Q. And to W. H. Fall?

A. She is his sister also.

Q. Has she ever talked with you about this matter?

A. No sir.

Q. How long had you been acquainted with Mrs. Eastin prior to to 1895?

A. I was acquainted with her years before I was married.

53 Q. Were you intimately acquainted with her?

A. Well, no.

Q. Were you on friendly terms?

A. Yes sir.

Q. She has never spoken to you about this matter yet?

A. No sir.

Q. Made no claims herself?

A. No sir, I haven't spoken to her since the divorce.

Q. Do you know where Mr. W. H. Fall lived during all of this time?

Mr. SMITH: That is objected to as incompetent, irrelevant and immaterial.

Objection overruled.

Exception.

A. He has lived here, in the house we used to own.
Q. Here in Aurora, Nebraska?
A. Yes sir.
Q. And how far is this land from Aurora, Nebraska?
A. Seven miles.
Q. It is in Hamilton County?
A. Yes sir.

Mr. MATTERS: That is all.

Cross-examination.

By Mr. HAINER:

Q. You say that I made a demand upon you for possession of these premises, or the half of it and the rents prior to the commencement of this action?
A. Yes sir, I did.
Q. And that was during the month of July before this action was commenced was it?
A. Yes sir.
54–58 Q. And I made that demand on behalf of Mrs. Eastin, did I not, the defendant?
A. Yes sir.
Q. In the presence of Mr. Burt?
A. Yes sir.
Q. And you refused to comply with that demand?
A. Yes sir, I was astonished at it.
Q. When did you say this action was commenced, are you sure you are correct in that, or did you not mean the action commenced by Mrs. Eastin for partition of the premises.
A. This action, I don't know, this sort of a suit that you have got on now.
Q. There were some papers served on you immediately after that time was there not, a notice that we would open up the judgment?
A. Yes sir, something of the kind.
Q. And you are sure that it was after you came here from Seattle?
A. Oh yes.

Mr. HAINER: That is all.

(By Mr. MATTERS:)

Q. You say it was a year ago last July?
A. Well, it might have been two years ago.
Q. Wasn't it July 1902?
A. It was July the 3rd.

Witness excused.

* * * * * * *

59 Ex. B. 12/4/1903. O. P. H.

60 In the Superior Court of the State of Washington for King County.

STATE OF WASHINGTON,
County of King, ss:

No. 20136.

E. W. FALL, Plaintiff,
vs.
SARAH S. FALL, Defendant.

Summons.

The State of Washington to the said Sarah S. Fall, defendant:

You are hereby summoned and required to appear within twenty days after the service of this summons, exclusive of the day of service, answer the complaint and serve a copy of your answer on the person whose name is subscribed to this summons at the place specified following his said name, and defend the above entitled action in the Court aforesaid; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, a copy of which is herewith served upon you.

W. F. HAYS,
Plaintiff's Attorney.

P. O. Address, 306-7 & 8 Bailey Bldg., Seattle, King County, Washington.

61 STATE OF WASHINGTON,
County of King, ss:

John O'Neill, being first duly sworn on oath deposes and says: That he was at all times herein mentioned over the age of twenty-one years and competent to be a witness in the within entitled action; that he is not a plaintiff in said action; that on the 27th day of February, 1895, between the hours of six in the morning and nine in the evening, he served the within summons and therewith a copy of the complaint in said action upon the within named defendant Sarah S. Fall, personally at her residence in the County of King, State of Washington, by then and there delivering to and leaving with her a true copy of said summons and therewith a true copy of said complaint.

JOHN O'NEILL.

Subscribed and sworn to before me this 28th day of February A. D. 189–.

W. F. HAYS,
Notary Public, Residing at Seattle in said County.

(Endorsed:) Filed April 17, 189–. T. W. Gordon, Clerk.

62 In the Superior Court of King County, State of Washington.

No. ——.

E. W. FALL, Plaintiff,
vs.
SARAH S. FALL, Defendant.

Plaintiff complains of defendant and for cause of action alleges:

1.

That plaintiff and defendant intermarried at Thorntown, State of Indiana, October 10, 1876, and ever since have been and now are husband and wife.

2.

That plaintiff and defendant have resided in the State of Washington since 1889 and now are *bona fide* residents of the County of King in said state.

3.

That defendant shortly after their said marriage displayed at times an extreme temper and frequently upbraided and severely castigated plaintiff without any reasonable provocation or fault of plaintiff.

4.

The defendant is possessed of an ungovernable temper and has on many occasions become violent and has been guilty of extreme cruelty to plaintiff, both in the use of abusive language in the presence and hearing of others and also in violently assaulting and battering of plaintiff with her fist and club without any fault of plaintiff.

63 5.

That defendant is possessed of an extremely jealous and suspicious nature and has frequently during their said married life and especially during the past few years wrongfully accused plaintiff of infidelity to her and of criminal intimacy with other women making plaintiff's life burdensome.

6.

That plaintiff is by profession a physician and surgeon and as such is necessarily required to maintain inviolate the secrets of his patients and to preserve all of their communications with him as sacredly confidential, but that defendant disregarding plaintiff's relation as aforesaid has frequently by false keys or otherwise unlocked or opened the private desks and drawers containing the secrets of the diseases and ailments of his patients, which fact would come to the knowledge of plaintiff afterwards, greatly to his humiliation and professional embarassment.

7.

That on account of the many and frequent cruelties and abuses aforesaid, plaintiff was compelled to leave his home in the City of Seattle, County and State aforesaid about the month of November 1893, and compelled to remain away from the house about six weeks but that defendant made promises to plaintiff that if plaintiff would return defendant would in the future do better.

8.

That relying upon the truth of defendant's promises plaintiff returned to their home about the middle of December, 1893, and again renewed his relation with the defendant.

64 9.

That defendant did in fact do better and treat plaintiff with due and proper consideration for about two weeks but that defendant again commenced a series of cruelties toward plaintiff in this, scolding and abusing plaintiff for not coming to his meals at the regular hours therefor and for remaining away at night, which he was required to do in his profession and all of which defendant should have known and did know, but that defendant persistently, falsely accused plaintiff of wrong doing, in order to harass and goad plaintiff greatly to his humiliation. That defendant frequently within the year last past, assaulted plaintiff in both look and language and on January 1895 battered plaintiff with her fist, on account of which plaintiff was compelled to leave his home and has on this account remained away ever since.

10.

That plaintiff is the owner of the S. W. ¼ of Sec. 12 Tp. 11 R. 7 a farm in Hamilton County, Nebraska, of the reasonable value of $3000 upon which there is a mortgage for the sum of $1000, said farm being the separate property of the plaintiff, having been purchased with the money received by plaintiff from the estate of his parents.

11.

That plaintiff is not possessed of any other property excepting household and office furniture, that said office furniture consists in instruments, books and cases of the value of $100 and the household furniture which is now in the custody and possession of said defendant is of about the value of $250.

65 12.

That plaintiff is possessed of no money or property other than the foregoing property mentioned.

13.

That during the past year, defendant has frequently against the wishes of plaintiff called at the office of plaintiff and while there and in the presence and hearing of the customers of plaintiff, defendant would so violently deport herself as to thereby frighten and drive

away the customers and patients of this plaintiff on which account the business and income of plaintiff has become so reduced and for the past few months and at the present time has not and does not yield enough money to pay his necessary and legitimate personal office expenses.

14.

That the defendant is possessed of a disposition to rule or ruin this plaintiff against his will and wishes and her temper is so incompatable that plaintiff can no longer live with defendant.

Wherefore, plaintiff prays judgment.

First. For a decree of absolute divorce.

Second. For a just and equitable division of the property herein described and for such relief as may be just and equitable.

W. F. HAYS,
Attorney for Plaintiff.

66 STATE OF WASHINGTON,
County of King, ss:

E. W. Fall, being first duly sworn on oath says: That he is the plaintiff named in the foregoing complaint that he has heard the same read, knows the contents thereof, and believes the same to be true.

E. W. FALL.

Subscribed and sworn to this 27th day of February 1895.

W. F. HAYS,
Notary Public in and for the State of Washington, Residing at Seattle, in said County.

(Endorsed:) No. 20136. Filed Apr. 17 1895. T. W. Gordon, Clerk.

67 In the Superior Court of the State of Washington for King County. Equity Department.

No. ——.

E. W. FALL, Plaintiff,
vs.
SARAH S. FALL, Defendant.

Answer and Cross-complaint.

Comes now the defendant, Sarah S. Fall, and for answer to plaintiff's complaint, says:

1. She admits the allegations contained in paragraphs 1 and 2 of said complaint.

2. She denies each and every allegation contained in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of said complaint.

And for a cross complaint and cause of action against the plaintiff *and* defendant, Sarah S. Fall, alleges:

1. That plaintiff and defendant intermarried at Thorntown, in the state of Indiana, on October 10th, 1876, and ever since said time have been, and now are, husband and wife.

2. That plaintiff and defendant have resided together as husband and wife in the State of Washington since 1889 and now are *bona fide* residents of Seattle, King County, Washington.

3. That plaintiff and defendant are the owners, as a community of the following described community property, towit: the south west quarter or section 12 township 11, north, range 7, in Hamilton County, Nebraska, being a farm in cultivation, with buildings and out buildings, which is of the reasonable value of four
68 thousand dollars, upon which there is a mortgage, executed by plaintiff and defendant, in the sum of one thousand dollars; that said farm was purchased with the money and proceeds of the joint labor of plaintiff and defendant after their marriage.

4. That plaintiff and defendant are the owners of no other real estate than that above mentioned, but are the owners of household and kitchen furniture of the value of about twenty-five dollars, situate in their residence in Seattle, Washington; that they also own office furniture and professional instruments, tools, appliances, desks, medical cases and similar property now in the possession of plaintiff in his office in the city of Seattle aforesaid of the value of about one hundred fifty dollars.

5. That for many years last past the *defendant* has been addicted to drinking intoxicating liquors and has been in the habit of becoming intoxicated, and has been rough, abusive and quarrelsome in his disposition, and has abused and mistreated the defendant in a most shocking, brutal and inhuman manner; that he has cruelly abused her in this to-wit: that he has struck her, cursed her, called her vile names and threatened to do her great violence and bodily injury, and only a short time before the filing of the complaint in this action he came home in a state of intoxication, and came to defendant's bed room where she was lying in bed, abused and cursed her, pulled her hair and dragged her about the room, struck her upon the head with his fist and knocked her down and violently abused and maltreated her, and continued such abuse and maltreatment until other persons came to her assistance and relieved her from his hands.

69 6. That thereafter the plaintiff, without any cause or provocation whatever, went away from their home and abandoned defendant and has not since visited her.

7. That for years past plaintiff has not furnished or supported the defendant with the necessaries of life, but has left her in the most pinching and absolute poverty, without sufficient clothing to render her respectable in appearance, without proper or comfortable underclothing and in every manner destitute, although said plaintiff has been at all said times a strong and able bodied man, a skilled mechanic, a learned physician of large practice and with

sufficient income to properly provide for and take care of defendant himself and their house.

8. That said plaintiff, although having earned at all said times a sufficient amount to provide for and maintain defendant, he has wasted his income in the purchase of intoxicating liquors, in playing dice and other games, in presents to lewd women and in associating with them.

9. That at divers and sundry times the plaintiff has committed adult-ry with a certain woman towit; one Maud Williams in the city of Seattle, with whom he at many times clandestinely met; that on Christmas day, 1893, he left this defendant alone at her home and privily sought out said woman and went and took dinner with her, and on said day exchanged presents with her, and afterwards received from her and kept at his office, concealed from this defendant, a photograph of said woman, and often received her at his office rooms at night, in a clandestine and improper manner; that when called to account for his conduct with said woman by
70 this defendant he sneeringly told defendant that she need have no fear of said woman's influence with him as the mother of said woman was the keeper of a low dive in the city of Seattle.

10. That the plaintiff at one time, and during his marriage relations with defendant, attempted in his office to commit an indecent assault upon a young woman then residing in the city of Seattle.

11. That the plaintiff at another time, in his office, made an indecent assault upon another young woman and attempted then and there to have illicit intercourse with said woman.

12. That said plaintiff kept up a secret private correspondence with another woman of bad character, towit: one Mrs. Frank Curren and wrote her many loving and affectionate letters and received in response thereto many affectionate and loving letters from her, and also received from her the photograph of her little girl which he kept in his office, and also presents.

13. That after the property hereinbefore described had been acquired and fully paid for, by the joint efforts of plaintiff and defendant, and after plaintiff and defendant, by their joint efforts had acquired two other valuable pieces of property in the city of Aurora, State of Nebraska, one of said named pieces of property being a house and two lots, and the other being a large fine dwelling house and about two acres of valuable ground, the plaintiff, desiring to become a physician and surgeon, and desiring to expend a portion of the money and property earned and acquired by plaintiff and defendant, as husband and wife, in fitting himself with a medical education, in order to furnish said plaintiff with the money necessary to complete his education as a physician and
71 surgeon, and to equip himself for the practice of medicine and surgery, plaintiff and defendant borrowed a large sum of money upon the piece of real estate hereinbefore mentioned as being a large dwelling house and about two acres of land in the City of Aurora, Nebraska, which said money plaintiff used in attending lectures, in boarding and supporting himself during his attend-

ance upon said lectures and in paying for the same, and said money not being sufficient in amount, plaintiff and defendant, at plaintiff's instance and request, sold the said house and two lots and applied the proceeds thereof in paying the expenses of said plaintiff in attending said medical lectures and in obtaining a medical education and in outfitting him for the practice of medicine and surgery; that said house and two lots in Aurora, Nebraska, were of the value of seven hundred dollars ($700.00) and said house and two acres of ground in Aurora, Nebraska, were of the value of two thousand five hundred dollars ($2500.00); that in addition to the proceeds of said two pieces of property, the piece of real estate first described in this cross complaint, towit: the S. W. ¼ of section 12, township 11 north, range 7, in Hamilton county Nebraska, which had been theretofore mortgaged by plaintiff and defendant in the sum of six hundred dollars ($600.00) was further mortgaged by plaintiff and defendant in the sum of four hundred dollars ($400.00) making one thousand dollars ($1000.00) in all, and said sum of four hundred dollars was used by plaintiff in obtaining his medical education as aforesaid, and in outfitting himself for the practice of medicine and surgery and in maintaining himself until such time as his practice would grow to such an extent as to support him.

72 14. That plaintiff, by means of the expenditure of all said sums of money and property, obtained an excellent medical education, and thoroughly outfitted himself both by education and otherwise for the practice of medicine and surgery, and that the education, knowledge and experience so acquired is of lasting and great value to plaintiff and enables him to make money rapidly and easily, and to support himself in comfort and affluence, and is an asset of great and inestimable value to the plaintiff in which this defendant can in no wise share after the decree of divorce is granted in this case.

15. That plaintiff has a large number of notes, accounts and claims against individuals for services rendered as a physician and surgeon in the City of Seattle, and County of King, of great value, of the amount and character whereof plaintiff is well informed and of which the defendant is in ignorance.

16. That this defendant did not believe the facts stated in paragraphs 9, 10, 11 and 12 of this cross complaint, until she has lately received proofs that the wrongful and illicit acts of her husband aforesaid were indeed true.

Wherefore, defendant prays that a decree of divorce be not granted or awarded to the plaintiff, but that she be granted a decree of divorce against the plaintiff and that the bonds of matrimony heretofore and now existing between them be absolved and held for naught.

2. That the property herinbefore mentioned and described to-wit: the S. W. ¼ of section 12 Township 11 north, range 7 in Hamilton County, Nebraska, be set apart to her as her own separate property, subject only to the mortgage in the sum of one thousand dollars now an incumbrance thereon, and the personal property con-

73 tained in the home of plaintiff and defendant be also set apart to her as her own separate property.

3. That she also have judgment against the plaintiff in the sum of one thousand dollars ($1000) alimony for her own immediate needs and support, payable in installments of one hundred dollars ($100) per month until the whole is paid and satisfied.

4. That she have judgment for her costs and for all other proper relief.

THOMPSON, EDSEN & HUMPHRIES,
Attorneys for Defendant.

STATE OF WASHINGTON,
County of King, ss:

Sarah S. Fall, being first duly sworn, upon oath says: that she is the defendant named in the above entitled action; that she has heard the foregoing answer and cross-complaint read, knows the contents thereof, and that she believes the same to be true;

SARAH S. FALL.

Subscribed and sworn to before me this 2nd day of April A. D. 1895.

[SEAL.] E. B. EDSEN,
Notary Public in and for Washington,
Residing at Seattle.

We hereby acknowledge service of the foregoing answer and cross complaint and the receipt of a true copy thereof, this 2nd day of April 1895.

W. F. HAYS,
Attorneys for Pl'ff.

(Endorsed:) No. 20136. Filed Apr. 16, 1895. T. W. Gordon, Clerk.

74 In the Superior Court of the State of Washington for King County.

No. ——.

E. W. FALL, Plaintiff,
vs.
SARAH S. FALL, Defendant.

Affidavit.

STATE OF WASHINGTON,
County of King, ss:

Sarah S. Fall being first duly sworn on her oath says: that she is the defendant and cross complainant in the above entitled cause; that she desires to defend said action against every allegation contained in plaintiff's complaint, and desires to file and prosecute her cross complaint in said action against the plaintiff to secure a divorce in her own behalf.

2. Affiant respectfully shows to the court that she has, for more than one year last past, been compelled to endure the most cruel and inhuman treatment at the hands of plaintiff, and has suffered untold hardships by reason of the fact that plaintiff has failed and refused to provide her with the proper and necessary means of support, has compelled her to go poorly and insufficiently clothed and has failed and refused to provide her with any money to protect or take care of herself, and she is now wholly destitute and without any money or means with which to prosecute her cross complaint against the plaintiff or to defend the action brought by him against her.

3. That she has sought the services of Messrs. Thompson, Edsen & Humphries, a firm of attorneys of Seattle, but has no means whatever with which to pay them for their services in defending
75 said suit or in prosecuting said cross complaint, nor has she any means even to pay the costs of the clerk of the Superior Court for entering her appearance in said action, and the money necessary to enable her to enter her appearance in said action she has been compelled to borrow; that she has no means whatever to support her during the pendency of this action.

4. That plaintiff is a strong able-bodied man, a physician of large practice, and is abundantly able to take care of this defendant and furnish her with means to defend said action and to prosecute her cross complaint for divorce against plaintiff, and she prays the court to require the plaintiff to pay into court for her use the sum of one hundred dollars ($100) for her benefit, and to be paid to her attorneys to defend her said action and to prosecute her cross complaint, and the further sum of fifty dollars ($50) to relieve her immediate necessities and to support her until said action can be tried.

SARAH S. FALL.

Subscribed and sworn to before me this 28th day of March 1895.

[SEAL.] JOHN E. HUMPHRIES,
Notary Public in and for the State of Washington, Residing at Seattle.

We hereby acknowledge service of the foregoing affidavit and the receipt of a true copy thereof, this 2nd day of April 189–.

W. F. HAYS,
Attorneys for Plaintiff.

(Endorsed:) Filed April 16, 1895. T. W. Gordon, Clerk.

76 Superior Court, King County, Washington.

No. 20136.

E. W. FALL, Plaintiff,
vs.
SARAH S. FALL, Defendant.

Issue of Law.

Note for Motion Docket, Equity Department, for Saturday, April 20th, 1895.

Noting for Hearing D'f't's Motion for temporary alimony.

W. F. HAYS,
Plaintiff's Attorney.
THOMPSON, EDSEN & HUMPHRIES,
Defendant's Attorneys.

Last Pleading Served April 2nd, 1895.

THOMPSON, EDSEN & HUMPHRIES,
Attorneys for D'f't.

(Endorsed:) No. 20136. Filed Apr. 16, 1895. T. W. Gordon, Clerk.

77 In the Superior Court of King County, State of Washington.

No. ——.

E. W. FALL, Plaintiff,
vs.
SARAH S. FALL, Defendant.

Affidavit.

STATE OF WASHINGTON,
County of King, ss:

E. W. Fall being first duly sworn on his oath says: That he is the plaintiff in the above entitled action. That he has read the affidavit of the defendant and knows the contents thereof.

1. Affiant says that he has not been cruel to the defendant during the past year or since their marriage but has been a kind generous, indulgent and affectionate husband.

2. That he has always provided the defendant with clothing sufficient for her comfort and happiness, in fact he has provided comfort and luxuries befitting their stations in life.

3. That he has never refused to furnish her with money until defendant cruelly and violently and without just cause or provocation drove the plaintiff from their home.

4. That defendant was left in possession and absolute control of their house and furniture and has had such possession and control since the — day of —— 1895, and that plaintiff has been wrongfully compelled by the defendant to seek other additional and expensive quarters for his own habitation.

78 5. That defendant is not destitute or without money or means, with which to prosecute her cross complaint.

6. That plaintiff is a practicing physician but that owing to the extreme dullness of the times and scarcity of money, affiant has been unable to collect from his business, money sufficient to pay his necessary and legitimate office and living expenses. That he is now involved in indebtedness for his office rent, janitor services and other necessary expenses amounting to over $100 and has no money on hands whatever with which to pay the debt or to pay any other sum and has no property excepting the property described in plaintiff's complaint.

7. That because of the making and publication of the false unwarranted, malicious and scandalous averments regarding plaintiff contained in defendant's cross complaint, the professional standing and the business of plaintiff have been irreparably injured and his ability to earn money has been and will be seriously affected and affiant is unable to pay any money to defendant or her said attorneys.

E. W. FALL.

Subscribed and sworn to before me this 17th day of April 1895.

W. F. HAYS,
Notary Public, Residing at Seattle, Wash.

Receipt of a copy and due service hereof admitted this 17th day of April 1895.

THOMPSON, EDSEN & HUMPHRIES,
Attorney- for Deft.

(Endorsed:) Filed April 17, 1895. T. W. Gordon, Clerk.

79 In the Superior Court of King County, State of Washington.

No. ——.

E. W. FALL, Plaintiff,
vs.
SARAH S. FALL, Defendant.

Reply.

Comes now the plaintiff and for reply to the answer and cross complaint of defendant alleges:

1.

He denies that the defendant is the owner as a member of the community, in conjunction with this plaintiff of the property therein described or any part thereof.

2.

He denies the allegations of paragraph four, that the house and kitchen furniture is worth $25 or any less sum than $250 and denies that the office furniture and instruments are worth $150 or any greater sum than $50.

3.

Plaintiff denies each and every allegation contained in paragraph five and six.

4.

Plaintiff denies each and every allegation in paragraph seven, except that plaintiff is a skilled mechanic and learned physician.

5.

Plaintiff denies the allegation in paragraph eight that he has wasted his income in the purchasing of intoxicating liquors or in playing dice and other games or in presents to lewd women or in associating with them or in any other manner.

80 6.

Plaintiff denies each and every allegation of paragraph- nine ten, eleven and twelve.

7.

Plaintiff denies that the property herein described was acquired by the joint efforts of plaintiff and defendant and in any other manner than by the separate money of plaintiff.

8.

He denies that the other valuable property referred to in said paragraph was sold and expended for the sole benefit of plaintiff or other than the support necessary for both plaintiff and defendant. That the money borrowed upon the real estate herein mentioned was wholly used for the benefit of this defendant as well as this plaintiff.

9.

Plaintiff denies each and every allegation contained in paragraph fifteen.

Wherefore, plaintiff demands judgment as in his complaint prayed.

W. F. HAYS,
Attorney for Plaintiff.

81–142 STATE OF WASHINGTON,
County of King, ss:

E. W. Fall, being first duly sworn on oath says: That he is the plaintiff named in the foregoing reply, that he has read the same, knows the contents thereof, and believes the same to be true.

E. W. FALL.

Subscribed and sworn to this 17th day of April 1895.

W. F. HAYS,
Notary Public in and for the State of Washington, Residing at Seattle, in Said County.

Receipt of a copy and due service hereof admitted this 17th day of April 1895.

THOMPSON, EDSEN & HUMPHRIES,
Attorney- for Def't.

(Endorsed:) No. 20136. Filed Apr. 17, 1895 T. W. Gordon, Clerk.

* * * * * * *

143 In the Superior Court of the State of Washington for the County of King.

FRIDAY, *September 27th*, 1895.

Hon. T. J. Humes, Judge.

E. W. FALL, Plaintiff,
vs.
SARAH S. FALL, Defendant.

This cause called regularly for trial, the depositions of Maude Boyle, Charles B. Timberlake, Maggie Timberlake, William H. Fall, Elizabeth Fall, Mary Childre, George Daniels and J. L. Howell are published. Witnesses are sworn and examined on behalf of plaintiff and defendant. Whereupon the Court after due consideration, and being fully advised in the premises, grants a decree of Divorce to the defendant on the ground of cruelty. Each party to pay their own costs of this action.

Journal 70, page 392.

144 In the Superior Court of the State of Washington for the County of King.

SATURDAY, *October 5*, 1895.

Hon. T. J. Humes, Judge.

E. W. FALL, Plaintiff,
vs.
SARAH S. FALL, Defendant.

And now in this cause the findings, conclusions and decree, *is* signed by the Court.

Journal 70, page 422.

145 In the Superior Court of the State of Washington for King County.

No. 20136.

E. W. FALL, Plaintiff,
v.
SARAH S. FALL, Defendant.

Findings of Fact, Conclusions of Law, and Decree.

Come again the parties in person and by their attorneys, and this cause is duly submitted to the court for trial, and the court having heard the evidence and being fully advised in the premises finds the facts as follows:

1. That the plaintiff E. W. Fall and the defendant and cross complainant Sarah S. Fall, intermarried in Boone County, Ind., on the 10th day of October 1876, and have ever since been and now are husband and wife.

2. That for more than three years last past plaintiff and defendant have resided together as such husband and wife in Seattle Washington.

3. That no children have been born to said parties as the issue of said marriage.

4. That said plaintiff and defendant while living together as such husband and wife, accumulated property to the value of about $5000.00 and that plaintiff in order to obtain a medical education and properly prepare himself for the practice of medicine expended a large amount of said property, leaving the following property towit: The S. W. ¼ of Sec. 12 Twp. 11 N. range 7 in Hamilton County, Nebraska, together with an interest in certain crops grown and growing on said land, the same being a farm under cultivation with buildings and out buildings of the reasonable value of $3000.00 upon which there is a mortgage executed by plaintiff and defendant for the sum of $1000; also certain personal property con-
146 sisting of household furniture now in the possession of the defendant of the value of $50.00 and certain personal property consisting of office furniture and fixtures of library and medical instruments and appliances of the value of $100 now in the possession of the plaintiff, and that said plaintiff and defendant have no other property whatever.

5. That for more than two years last past the plaintiff has been addicted to drinking intoxicating liquors, and becoming intoxicated, and has been rough, abusive, quarrelsome, and has abused and mistreated the defendant in such cruel and inhuman manner cursing her, calling her names and striking her to such an extent as to render life a burden to her.

6. That plaintiff is a strong able bodied man, well educated and a competent and skillful/ physician and surgeon, and in every respect able to earn a living and accumulate money and property

that defendant is a woman of fragile health, without strength or ability to earn a living or to accumulate property or money.

7. The court finds that the defendant and cross complainant Sarah S. Fall, is entitled to judgment and decree of divorce and is entitled to have set off to her that certain personal property consisting of household goods and furniture now in her possession and that certain tract of real estate above described, towit: The S. W. ¼ of Sec. 12 Twp. 11 Range 7 in Hamilton County, Nebraska, together with the appurtenances thereto, and all crops grown or growing thereon, for the year 1895; that the plaintiff E. W. Fall, is entitled to the whole of the personal property consisting of office furniture and fixtures, library, medical instruments and appliances heretofore mentioned now in his possession.

Conclusions of Law.

As conclusions of law upon the special facts as aforesaid the court finds:

1. That the plaintiff is not entitled to a decree of divorce in said cause, but that the defendant and cross complainant, Sarah
147 S. Fall, is entitled to a decree of divorce against the plaintiff dissolving the bonds of matrimony heretofore and now existing between them.

2. That the defendant and cross complainant Sarah S. Fall, is entitled to a decree of this court, setting apart to her as her own separate property forever, the personal property consisting of household goods, furniture and fixtures now in her possession, and the certain tract of real estate towit: the S. W. ¼ of sec. 12 twp. 11 N. range 7 in Hamilton County, Nebr. with all the appurtenances thereto, and the crops grown and growing thereon for the year 1895, and is entitled to a decree of this court causing said property to be conveyed to her in fee simple free and clear of any claim or incumbrance of the plaintiff to the whole or any part thereof.

3. That the plaintiff E. W. Fall, is entitled to a decree setting apart to him as his own separate property, free of any claim or incumbrance of the defendant, all that personal property heretofore described consisting of office furniture and fixtures, medical library, medical instruments and appliances now in his possession.

Decree.

It is therefore considered, ordered, adjudged and decreed by the court that the bonds of matrimony heretofore existing between the plaintiff and the defendant are now, at the prayer of said defendant, dissolved, cancelled, annulled set aside and held for naught.

2. That the certain real estate heretofore belonging to the plaintiff and defendant towit: the S. W. ¼ of Sec. 12 Twp. 11 N. Range 7, in Hamilton County, Nebraska, being a farm in cultivation together with the appurtenances thereto and the crops grown or growing thereon for the year 1895, be and the same is hereby set apart to

the defendant Sarah S. Fall, as her own separate property forever free and unincumbered from any claim of the plaintiff
148 thereto, and that said E. W. Fall, is hereby ordered and directed by the court to convey, all his right, title and interest in and to said real estate to said Sarah S. Fall, within five days from the date of this decree.

3. That the certain personal property consisting of household furniture now in the possession of the defendant be and the same is hereby set apart to her as her own separate property forever, free and unincumbered from any claim of the plaintiff E. W. Fall.

4. That the certain personal property hereinbefore described consisting of office furniture and fixtures, medical library, instruments and appliances, now in the possession of the plaintiff, be and the same are her-by set apart to said E. W. Fall as his own separate property forever, free and clear of any claim or incumbrance of the plaintiff.

5. It is further ordered, adjudged and decreed that neither said plaintiff nor said defendant shall contract any marriage for a period of six months from this date.

That each of the parties to this action shall pay his or her own costs and neither shall recover any costs from the other.

Dated this 5th day of October 1895.

T. J. HUMES, *Judge.*

We hereby acknowledge service of the foregoing findings of fact and conclusions of law and the receipt of a true copy thereof, this 3 day of Oct. 1895.

W. F. HAYS,
Attorneys for Pl'ff.

(Endorsed:) Filed Oct. 7, 1895. T. W. Gordon, Clerk.

149 In the Superior Court of the State of Washington for King County.

No. 20136.

E. W. FALL, Plaintiff,
v.
SARAH S. FALL, Defendant.

Notice.

To the above-named plaintiff and to W. F. Hays, his attorney:

You are hereby notified that the findings of fact and conclusions of law in the above entitled cause, a copy of which is herewith served upon you, will be presented to the Hon. T. J. Humes the Judge, who tried said cause, on Saturday Oct. 5, at 9.30 a. m. or as soon thereafter as counsel can be heard, with the request that the same be signed as the findings of fact and conclusions of law in said cause.

THOMPSON, EDSEN & HUMPHRIES,
Attorneys for Defendant.

We hereby acknowledge service of the foregoing notice and the receipt of a true copy thereof, this 3 day of Oct. 1895.

W. F. HAYS,
Attorneys for Pl'ff.

(Endorsed:) Filed Oct. 8, 1895. T. W. Gordon, Clerk.

150 In the Superior Court of the State of Washington for the County of King.

No. 20136.

FALL, Plaintiff,
vs.
FALL, Defendant.

Note for Motion Cal.

To T. W. Gordon, clerk:

You will please note for motion cal. for Saturday Oct. 12, 1895. Nature of action—Motion to correct finding etc., last pleading served Sept. 28/95 Criminal Court.

W. F. HAYS AND
BRADY, GAY & McBRIDE,
Att'ys for Pl'ff.
THOMPSON, E. & H.,
Att'ys for Def'ts.
W. F. HAYS,
Attorneys for Pl'ff.

(Endorsed:) Filed Oct. 8, 1895. T. W. Gordon, Clerk.

151 In the Superior Court of the State of Washington for the County of King

SATURDAY, *October* 12, 1895.

Hon. T. J. Humes, Judge.

E. W. FALL. Plaintiff,
vs.
SARAH S. FALL, Defendant.

And now plaintiff's motion to correct the findings of fact made and entered in this cause is denied. Exception allowed.
Journal 70, page 452.

152–164 In the Superior Court of King County, Washington.

No. —.

E. W. FALL, Plaintiff,
vs.
SARAH S. FALL, Defendant.

Notice.

To the defendant Sarah S. Fall, and her attorneys, Messrs. Thompson, Edsen & Humphries:

Take notice, that the plaintiff appeals from the order of the court, heretofore entered on the 12th day of October 1895, refusing to vacate the findings of fact and decree in this cause, heretofore entered, and from the judgment and decree heretofore entered in said cause and the whole thereof.

W. F. HAYS,
Attorney for Plaintiff.

Receipt of a copy and due service hereof admitted this 14th day of October 1895.

THOMPSON, EDSEN & HUMPHRIES,
Attorneys for Defendant.

(Endorsed:) Filed Oct. 18, 1895. T. W. Gordon, Clerk.

* * * * * * *

165 In the Superior Court of the State of Washington, May Session, A. D. 1896.

Be it Remembered, That at a regular session of the Supreme Court of the State of Washington, begun and holden at Olympia, on the 2d Monday in May A. D. 1896, it being the Eleventh day of said month, among other, the following was had and done, towit:

FRIDAY, *May 15th,* 1896.

No. 2246.

E. W. FALL, Appellant,
vs.
SARAH S. FALL, Respondent.

Judgment.

This cause coming on to be heard by the court on the motion of the respondent to dismiss the appeal herein and for judgment against the sureties on the appeal bond, and the court having fully considered the same, and being fully advised in the premises, it is now on

this 15th day of May A. D. 1896, on motion of Thompson, Edsen & Humphries of counsel for respondent, considered, adjudged and decreed that the appeal herein be and the same is hereby dismissed with costs, and that the said Sarah S. Fall have and recover of and from the said E. W. Fall, and from L. Chopard, surety the costs of this action taxed and allowed at Twenty Seven & 95/100 Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the Superior Court of King County for further proceeding, in accordance herewith.

166 I, C. S. Reinhart, Clerk of the Supreme Court of the State of Washington, do hereby certify that the foregoing is a true copy of the judgment and decree in said cause, as the same now remains of record in my office.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court at Olympia, this 18th day of June A. D. 1896.

[SEAL.] C. S. REINHART,
Clerk of the Supreme Court,
State of Washington.

(Endorsed:) No. 20136. Filed Jun- 20, 1896. T. W. Gordon, Clerk.

167 In the Superior Court of King County, State of Washington.

E. W. FALL, Plaintiff,
v.
SARAH S. FALL, Defendant.

STATE OF WASHINGTON,
County of King, ss:

J. L. Dudley being first duly sworn upon oath says: that he is above the age of 21 years; that on the 30th day of June 1896, he duly served the hereto attached affidavit, Notice and Order upon Messrs Brady & Gay, attorneys of record in the above entitled cause, by leaving a true and correct copy of each of said papers at the office of said Brady & Gay, in Seattle Washington, between the hours of 9 A. M. and 5 P. M. of said day. That said Brady & Gay refused to accept service of the same.

J. L. DUDLEY.

Subscribed and sworn to before me this 30th day of June 1896.

E. P. EDSEN,
Notary Public in and for the State of
Washington, Residing at Seattle.

168 In the Superior Court of King County, State of Washington.

No. 20136.

E. W. FALL, Plaintiff,
v.
SARAH S. FALL, Defendant.

Affidavit.

STATE OF WASHINGTON,
County of King, ss:

Sarah S. Fall being duly sworn, upon oath deposes and *sa* says: that the judgment in the above entitled cause was affirmed by the Supreme Court on the 15th day of June 1896, and the re*mititur* has been returned and is now on file in the Clerk's office of the above entitled court. That the plaintiff E. W. Fall, has refused to make the deed as ordered and directed by the decree of this court, or at all; that plaintiff is attempting to defeat the decree of this court, and has, as affiant is informed and believes, made a deed of conveyance since said decree, of said land, to his sister, now living in the State of Illinois, and has caused said deed to be placed of record, clouding the title of said land; that it is necessary that said land be conveyed in accordance with said decree.

Wherefore, affiant asks that a commissioner be appointed and ordered by this honorable court to execute a deed in all respects according to the form and substance of the decree in this cause.

SARAH S. FALL.

169 Subscribed and sworn to before me this 30th day of June, 1896.

[SEAL.] JOHN E. HUMPHRIES,
Notary Public in and — the State of Washington,
Residing at Seattle.

170 In the Superior Court of King County, State of Washington.

No. 20136.

E. W. FALL, Plaintiff,
v.
SARAH S. FALL, Defendant.

Notice.

To E. W. Fall and to Messrs. Brady and Gay, his attorneys:

You and each of you are hereby notified that on the 3rd day of July 1896 at 9.30 A. M. or as soon thereafter as the foregoing petition can be heard, or if the Honorable T. J. Humes is not present

on said day then at 9.30 A. M. on the first day the said T. J. Humes will hear the same, the petitioner herein will present the foregoing petition and move that a commissioner be appointed in accordance with the order and decree of this court.

JOHN E. HUMPHRIES AND
E. P. EDSEN,
Attorneys for Petitioner.

171–174 In the Superior Court of King County, State of Washington.

No. 20136.

E. W. FALL, Plaintiff,
vs.
SARAH S. FALL, *Plaintiff.*

Order.

Whereas, the above defendant, Sarah S. Fall, has filed her affidavit herein showing to this court that the judgment in the above entitled cause was affirmed by the Supreme Court on the 15th day of May 1896, and the remittatur has been returned to this court and that plaintiff has failed and refused to convey said real estate in accordance with the judgment and decree in this court in this cause; and has failed to appear hereto.

Now therefore, it is hereby ordered that W. T. Scott be and he hereby is appointed a commissioner to make and execute a deed in accordance with the decree of this court in this cause.

T. J. HUMES, *Judge.*

Dated July 3rd 1896.

We the undersigned, attorneys for the plaintiff in the above entitled cause, do hereby certify that the above and foregoing complaint and summons are true and correct copies of the original complaint and summons in said cause.

THOMPSON, EDSEN & HUMPHRIES,
Attorneys for Plaintiff.

(Endorsed:) No. 20136. Filed Jun- 30, 1896. T. W. Gordon, Clerk.

* * * * * * *

175 In the Superior Court of the State of Washington in and for the County of King.

No. 20136.

E. W. FALL, Plaintiff,
vs.
SARAH S. FALL, Defendant.

Order.

Now on this 21st day of June 1897, upon motion of the defendant the court being fully advised in the premises

It is hereby ordered and directed that the defendant herein be permitted to withdraw from the files of this court permanently the deed executed by W. T. Scott, Commissioner of this court, to the defendant Sarah S. Fall, Copy of said deed to be filed with the clerk.

Dated Seattle, Washington June 21st, 1897.

O. JACOBS, *Judge.*

(Endorsed:) No. 20136. Filed Jun- 21, 1897. T. W. Gordon, Clerk.

176 In the Superior Court of the State of Washington for the County of King.

FRIDAY, *July* 3, 1896.

Hon. T. J. Humes, Judge.

E. W. FALL, Plaintiff,
vs.
SARAH S. FALL, Defendant.

Affidavit and petition granted and signed.
Journal 80, page 502.

177 This indenture made and entered into this 3rd day of July 1896 by and between W. T. Scott, a commissioner appointed by the Superior Court of King County, State of Washington, in the case of E. W. Fall *v.* Sarah S. Fall, No. 20136, party of the first part and Sarah S. Fall of Seattle, Washington, party of the second part:

Witnesseth: That the said party of the first part in conformity with an order by the Superior Court of King County, State of Washington, in the above case, and for and in consideration of the sum of One Dollar, lawful money of the United States, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged does by these presents grant, bargain, sell convey and confirm unto the said party of the second part, and to

her heirs and assigns the following tract of land situated in Hamilton County, Nebraska:—The Southwest quarter (¼) of section Twelve (12) Township Eleven (11) Range Seven (7) together with the appurtenances.

To have and to hold the said premises unto the said party of the second part and to her heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

W. T. SCOTT. [SEAL.]
Commissioner.

Signed, sealed and delivered in presence of

——— ———.

STATE OF WASHINGTON,
County of King, ss:

This is to certify that on this 3rd day of July 1896, before me John E. Humphries, a Notary Public in and for the State of Washington, residing at Seattle, duly commissioned and sworn personally came W. T. Scott, Commissioner above named, to me known to be the individual described in and who executed the within instrument as such Commissioner and acknowledged to me that he signed and sealed the same as free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year first above written.

[SEAL.] JOHN E. HUMPHRIES,
Notary Public as Aforesaid.

Examined and approved by the court this 3rd day of July 1896.
T. J. HUMES, *Judge.*

Endorsed: (Filed Jun. 23, 1897. Geo. M. Halloway, Clerk.

178 In the Superior Court of the State of Washington for the County of King.

STATE OF WASHINGTON,
County of King, ss:

I, C. A. Koepfli, County Clerk of King County and *ex-officio* clerk of the Superior Court of the State of Washington for the County of King, do hereby certify that the foregoing is a full, true and correct transcript of the entire record and files (excepting an affidavit of Commissioner filed July 3, 1896, which is not among the files in said cause), in cause No. 20136 E. W. Fall *vs.* Sarah S Fall, as the same appears on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 12th day of June 1903.

[SEAL.] C. A. KOEPFLI, *Clerk.*

STATE OF WASHINGTON,
County of King, ss:

I, W. R. Bell, Judge of the Superior Court of the State of Washington for the County of King, the same being a court of record and having a clerk and seal, do hereby certify that C. A. Koepfli, who has signed the foregoing attestation is the duly elected and qualified clerk of King County and *Ex-Officio* Clerk of the Superior Court of the State of Washington for the County of King, that said signature is his genuine handwriting, and that all his official acts as such Clerk are entitled to full faith and credit, and I further certify that said attestation is in due form of law.

In witness whereof, I have hereunto set my hand and caused the Seal of said Court to be hereunto affixed this 12th day of June 1903.

[SEAL.] W. R. BELL, *Judge.*

Attest:
C. A. KOEPFLI, *Clerk.*

STATE OF WASHINGTON,
County of King, ss:

I, C. A. Koepfli, County Clerk of King County and *ex-officio* Clerk of the Superior Court of the State of Washington for the County of King, do hereby certify that the Honorable —— —— who signed the foregoing certificate, is the duly elected and qualified Judge of said court and that the signature of said Judge to said certificate is his genuine handwriting.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said Court this 12th day of June A. D. 1903.

[SEAL.] C. A. KOEPFLI, *Clerk.*

179 Mr. MATTERS: We now offer in evidence Hills Annotated Statutes and Codes of Washington, Vol. 2.—We offer in evidence the Title page and Preface thereof, with leave to supply certified copy.

Mr. HAINER: That is objected to as incompetent irrelevant and immaterial under the issues in this case, and no sufficient foundation laid for its introduction.

Objection overruled.

Exception.

Title page and Preface offered is received and read in evidence, as shown at pages 16*a* and 16*b* hereof.

Mr. MATTERS: We now offer in evidence paragraph 771 on page 365 of Hills Annotated Statutes and Codes of Washington, Vol. 2, being section No. 2007 with leave to supply certified copy.

Mr. HAINER: That is objected to as incompetent, irrelevant and immaterial and no sufficient foundation laid for its introduction.

Objection overruled.

Exception.

Paragraph offered is received and read in evidence as shown at page 160, hereof.

180 *The General Statutes and Codes of the State of Washington.*

Arranged and Annotated by William Lair Hill, Code Commissioner of the State of Washington.

Vol. II.

Code of Procedure.

Penal Code.

Constitutions.

San Francisco.
Bancroft-Whitney Company,
Law Publishers and Law Booksellers.
1891.

181 Preface.

By the act under which this volume is published, the commissioner was required to take the Code of 1881 as a basis and to suggest such additions and alterations only as might be deemed necessary for its convenient application as a complete and harmonious system of remedial and penal laws under the new conditions arising out of the change from a territorial to a state government. Adhering to this plan as closely as practicable, the commissioner was still compelled by the radical difference between the judicial system provided by the constitution of the state and that which existed under the territorial government, and also by other differences less prominently noticeable, but not less irreconcilable with the former condition, to suggest a great number of alterations and additions.

This was done in the form of bills presented to the legislature for enactment, and many of the bills so presented were enacted into laws as presented; some were enacted with amendments, and quite a number were not reached for final action. Some incongruities appear in the laws as consequence of the failure of such bills as were not acted on and the modification of others, necessitating the incorporation herein of a few sections of the Code of 1881 and other territorial statutes which are not in all respects conformable to the remedial system now in operation. Some of the more important of these are noted at the foot of the sections, others being inserted without note.

Sections of the Code of 1881 which have not been in any respect modified are indicated by a number in brackets corresponding to the number they bore in that Code; sections from other statutes including those enacted at the last session of the legislature, have the date of their approval appended in Italics; and sections which were, by the terms of the acts to take effect on approval are indicated at the end of the section by the words "In effect immediately".

Statutes which appear clearly and certainly to be superseded by

subsequent enactments are omitted; but wherever there has seemed to be reasonable ground for doubt upon this subject the statute has been incorporated in juxtaposition with that which may be supposed to have superseded it; and no statute passed by the state legislature has been omitted because of supposed conflict with the constitution. In a number of cases the changes suggested by the commissioner were intended to remove uncertainties of this nature, and most, but not all of these were passed by the legislature; so there will be found occasional provisions the constitutionality of which may be questioned, and others which the courts may hold to have been abrogated by later acts. The titles of the statutes are omitted, except where there appears in the relation of the title to the body of the statute some special reason for inserting them. In such cases the title is given in the footnotes.

W. L. H.

182 Page 365 of Statutes and Codes of Washington, Vol. II.

SECTION 2007, Paragraph 771. In granting a divorce the court shall also make such disposition of the property of the parties as shall appear just and equitable, having regard to the respective merits of the parties and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it for the benefit of the children, and shall make provision for the guardianship custody and support and education of the minor children of such marriage. (February 24, 1891, Par. 5.)

183 Pages 417 to 422 inclusive of the 2nd volume Washington Reports, offered, received and read in evidence, reads as follows:

(No. 156. Decided June 8, 1891.)

SARAH A. WEBSTER
v.
DAVID H. WEBSTER.

Divorce—Division of Property.

In granting a divorce the court has power, under the statute of this state (Code 1881, par. 2667) to make such division of the joint and separate property of husband or wife as shall, in its discretion appear just and equitable.

Appeal from Superior Court, King County.

Suit for divorce by David H. Webster against Sarah A. Webster Defendant answered and also filed a cross complaint upon which a decree of divorce was rendered. The court made among others, the following finding of facts:

"IV. That the following property, towit: All of lot two and a strip three feet wide off of the north side of lot three in block seven,

in Boren and Denny's Addition to Seattle is a part and parcel of two lots originally purchased on or about the 24th day of July 1869, at a time when the plaintiff and defendant were living together endeavoring to make a home and providing for the future; that neither at that time, had any money excepting that which was earned by the plaintiff in his daily vocation, excepting a small amount that the defendant Sarah A. Webster received, from her half brother; that whatever sums said defendant received from her brother or otherwise acquired, were used and expended for the benefit of both in the household affairs; that the purchase money for said two lots was made by the plaintiff, and money of his own earning; that whatever improvements have been erected upon said lots with the exception of the building known as the Webster building, were erected from money earned by plaintiff; that the Webster block has been erected by moneys received from a mortgage upon said realty; that at the time of making the final payment on said lots the deed was taken in the name of the defendant Sarah A. Webster, but that the property was not deeded to her nor intended, nor was it understood at the time, nor since as a gift; that the property just referred to is of the value of $25,000 which enhanced value is by reason of the increase in value of real estate and not from any particular act of either one of these parties, excepting as far as the building erected thereon adds to that value, the money for the erection of which was received from a mortgage thereon; that since their marriage they have also acquired and are now the owners of lots five and six on Block four in Robinson's addition to the city of Seattle.

Upon which finding of fact the court made the following conclusion of law, towit:

184 "That said real property should be divided share and share alike, subject to the debts, which should be paid in the same way."

The defendant and cross complainant, Sarah A. Webster, excepted to the findings of fact, and conclusions of law and from the judgment thereon appeals to this court.

Richard Osborn, and Thompson, Edsen & Humphries, for appellant.

Jacob & Jenner and Ronald & Piles for appellee.

The opinion of the court was delivered by DUNBAR, *J.*

The main question to be decided in this case involves the construction of Par. 2007 of the Code of Washington which is as follows:

"SEC. 2007. In granting a divorce the court shall also make such disposition of the property of the parties as shall appear just and equitable, having regard to the respective merits of the parties, and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it for the benefit of the children and shall make provision for the guardianship, custody and support and education of the minor children of such marriage."

This statute was passed in 1873, prior to the passage of the community property law, and has ever since been the law of the territory and of the state. It is contended by appellant that this must be construed to mean that the court shall make such division of the joint property of the parties as shall appear just and equitable and that the separate property of either spouse is not to be considered in making such disposition. We are unable to see how this construction can be sustained by any rule for the interpretation of the statutes. The language of the statute seems to be plain and unambiguous, and the words must be given their ordinary meaning. The statute does not say that the court shall make such disposition "of their joint property," etc., but shall make such disposition "of the property of the parties." This language is comprehensive; it is an equitable division of the property rights of the parties that the court is authorized to make. One statute defines what separate property is, another what community property is, and who shall have control of separate property, and who of real property rights, both separate and community; but these statutes relate to property rights during coverture. This state, however, provides that when coverture is to be broken and the marriage relations dissolved, that the parties shall bring into court all their property, and a complete showing must be made. Each party must lay down before the Chancellor all that he or she has, and after an examination into the whole case, he makes an equitable division. This view is strengthened, and it seems to me established beyond controversy by the succeeding provision by the section, "having regard to the respective merits of the parties, and to the condition in which they will be left by such divorce, and to the party
185 through whom the property was acquired." If the court has no jurisdiction over the separate property, and cannot take it into account in making the division, that portion of the statute which says it shall have regard to the party through whom the property was acquired is meaningless. The law does not require an equal division of the property, but a "just and equitable" division and as no general rule for a just and equitable division can be laid, but each case must be adjusted according to its own merits, and the particular circumstances surrounding it, the court investigates all the circumstances—(1) as to who is to blame, or, if neither party is blameless, the decree of blame to be attached to the respective parties; (2) who is the more proper party for the custody of the minor children, if any; (3) if there is a disposition of the property to be made, the manner in which it was acquired, whether derived principally from the husband or the wife or by their joint exertions; the condition of the parties as to age and health, and a great many considerations which will necessarily enter into the discretion of the court in making the division. The separate property of the husband or the wife is simply a circumstance for the court to take into consideration in making the division.

This subject is now regulated very largely by statute and there is great similarity in the statutes, all of them investing the court with large discretionary powers. In Iowa, under a statute substantially like ours, which provides that, "when a divorce is decreed, the court

may make such order in respect to the children and property of the parties, and the maintenance of the wife, as shall be right and proper," it is held that when a divorce is in favor of the wife, a part of the husband's lands may be set off to her to be held by her in fee simple. Jolly *v.* Jolly, 1 Iowa, 9. In Kentucky and Alabama the courts have refused to divide the separate property of either spouse; but, in the statutes of each of these states which give the court substantially the same discretion that ours does, there is a special provision or saving clause, to the effect that "nothing herein contained shall be construed to authorize the court to compel either party to divest himself or herself of the title to real estate." This very provision is, at least a legislative recognition that without it the court would have power to divest the title, and even these courts, in the exercise of their discretion, award the use of the separate estate of one spouse to the other for life. In Alabama the wording of the statute is, "The Court pronouncing a decree shall order and decree a division of the estate of the parties in such way as to it shall seem just and right, having due regard to the rights of each party and their children, if any; "with the provision quoted above. And the supreme court in construing the statute in Lovett *v.* Lovett 11 Ala. 763, says that the estate of the parties was the estate held by either husband or wife, or by them jointly.

We are clearly of the opinion that Par. 2007 of the Code confers upon the court the power, in its discretion, to make a division of the separate property of the wife or husband.

186 With this view of the law of the case, and seeing no abuse of discretion by the court in its findings or conclusions we are of the opinion that the judgment should be affirmed.

The point raised by the appellant in regard to the refusal of the court to discharge the receiver after the appeal in this case had been taken, we think is not properly before us, and we have therefore not considered it.

Judgment of the lower court is affirmed.

Anders, C. J., and Scott, Hoyt, and Stiles, JJ., concur.

187 Pages 441 to 447 inclusive of Vol. II of Washington Reports reads as follows:

FLETCHER R. FIELDS, SIMON G. FIELDS, and NANCY E. FIELDS,
v.
SARAH J. FIELDS.

Divorce—Division of Property—Fraudulent Conveyance—Custody of Children.

Under Par. 2007, Code 1881, the court decreeing a divorce has power to make a division of all the property of the parties whether it is community or separate property, and the court will consider through whom the property was acquired merely as a circumstance to aid it in making an equitable division.

Where a man, just prior to commencing a suit for divorce conveys

to his brother all his real and personal property, including his home, without receiving any cash payment therefor, or any written security, without any definite time of payment agreed upon, and dependent upon the grantee's verbal promise to give him some money from time to time, the conveyance will be held fraudulent as against the wife.

A decree awarding the custody of children to the wife, although her conduct may not be entirely blameless, will be upheld where it is shown that the husband is in the habit of getting under the influence of liquor, that he has treated his wife harshly and cruelly, sometimes striking her and has made charges of adultery against her which he has failed to sustain.

Appeal from Superior Court, Walla Walla County.

D. J. Crowley and Geo. T. Thompson for appellants.
Brents & Clark for appellee.

The opinion of the court was delivered by DUNBAR, *J.*:

This action was brought by the plaintiff against the defendant for a decree of divorce, the division of the property and the custody of the minor children. It seems from the testimony that the plaintiff and defendant commenced living together in 1873; that a marriage license was obtained; that they went to a neighboring town for the purpose of getting married, but returned without having the marriage ceremony performed; that they represented themselves as husband and wife; that they lived and cohabited together as husband and wife; that several children were born to them; that they conveyed and incumbered land as husband and wife; and that in the community in which they lived they were generally thought to be husband and wife; that this state of affairs existed until about three years before the commencement of this action, when they had the marriage ceremony performed in the statutory form. At the time they commenced living together in 1873 the defendant had no property and the plaintiff had property variously estimated at from two to eight thousand dollars. The court below found it was worth $3,000, which was probably a reasonable valuation. There are now living two minor children the fruits of their union, towit: Maud May Fields, age twelve years; and Fletcher R. Fields, Jr., aged five years. The complaint alleges that the parties plaintiff and defendant were intermarried on February 6th, 1888; alleges cruel and inhuman treatment on the part of the defendant towards plaintiff and charges defendant with adult-ry with divers persons, some named and others unnamed. The answer of the defendant is a denial of the adult-ry and of the cruel and inhuman treatment charged, and alleges various acts
188 of cruelty on the part of the plaintiff, such as frequently and falsely accusing her of adult-ry with divers and sundry people, applying to her insulting degrading and opprobrious epithets, and vulgar and indecent names in the hearing of others, and that he had cursed and applied vile epithets to his little daughter; that he had struck defendant and threatened to kill her and drove her away from their house; that for the last two years he was in the habit of

getting and being frequently drunk; and many other damaging allegations. Defendant alleges their intermarriage in October 1873. The reply of plaintiff denies all affirmative allegations in the answer, excepting that he admits that on the 23rd day of April 1890 he struck plaintiff; and admits that during the last two years he has been occasionally drunk. Afterwards, on the petition of defendant, alleging the conveyance of Fletcher R. Fields to Simon G. Fields, of certain lands claimed to belong jointly to the plaintiff and defendant the said Simon G. Fields and his wife Nancy E. Fields were made parties to this action, and filed an answer denying the fraudulency of the conveyance and alleging that said conveyance was made in good faith. The principal legal discussion in this case was as to the status of the property with relation to the community property laws. Appellants contended that a great portion, if not all the property involved, was the separate property of the husband; and appellee contended that it was community property. The decision of this court in Webster *v.* Webster, *ante*, p. 417 (at this term) eliminates that question from this case, as it was there held that under the provisions of Par. 2007 of the code, the court decreeing a divorce has power to make division of all the property of the parties whether it was community or separate property, and the court would only consider through whom the property was acquired as a circumstance to aid it in making an equitable division and, while it is a circumstance to be considered it is not a controlling fact, but will be considered by the court as any other important fact in the case.

Some discussion was had as to the extent of the authority conferred by a power of attorney given by the defendant to the plaintiff under authority of which plaintiff conveyed the land to Simon G. Fields. Without discussing the legality or potency of the instrument, it seems to me that the unusual character of this transaction and all the circumstances surrounding it conclusively point to fraud on the part of the plaintiff, if not also on the part of Simon G. Fields. Here was an $18,000. transaction, involving all the property, according to the testimony of the plaintiff that he had; involving the home of himself and family, sold to his own brother, just prior to the time he commenced suit against his wife for divorce, and when he evidently had the suit in contemplation (the deed being executed May 11 1890, and the complaint filed in the clerk's office the 14th of May succeeding); a wife who had a short time before brought two suits for divorce; a wife whom he testified was "trying to break him up," a sale made and deed executed on the strength of a power of attorney, the legality of which he was doubtful of himself and made after he had tried and failed to get a good power of attorney from the defendant, and after her refusal to give a better power of attorney had been made known to the purchaser.

189 It is not thus that business is transacted that is open and above board. If the defendant refused to execute the power of attorney, and both of the parties to the sale knew this, it was notice to them that she did not wish to convey any property under the power of attorney already given, and was undoubtedly intended by her and understood by them as a revocation of the power of attorney,

and from that they understood her unwillingness to sell; but, notwithstanding this fact, on failing to obtain a better power of attorney, they concluded to chance the one they had. We quote from the testimony of Simon G. Fields, on cross examination.

"Q. You knew at the time you bought this place, did you not that his wife had some trouble, and he intended to bring this suit? A. I didn't know he was going to bring it so soon. I knew he had started to do it once or twice before that. I expected suit would be brought.

"Q. You were expected to obtain this property, and hold it during the suit were you not? A. I don't know as I was.

"Q. Wasn't that the object in the transfer of this property? A. No sir.

"Q. How did you pay him for it? A. I haven't paid him yet.

"Q. How did you secure him? Did you give him a mortgage? A. No sir.

"Q. And you gave no security at all then? A. None, only my word. He owed me a little, and he was to have the crop.

"Q. Has he not asked you for any notes or mortgages or anything? A. No sir.

"Q. The COURT: Did he take your word for the whole price of eighteen thousand dollars? A. Yes sir.

"Q. The deed was the only writing that passed between you? You were to deed this place back to him after suit were you not? A. I was to deed it back if I wanted to.

Witness also testified that he was to pay no interest on the purchase price, and that there was no definite time at which the payment was to be made; or to use his own words:

"Well, he said he would give me time. He said he would want some money off and on. I said I would give him some money at times. There was no fixed time."

There was really no agreed valuation of the land, according to their own statement; for there was no interest to be paid, and the real price to be paid would depend upon the time of the payment of the principal, and as this time was not agreed upon the actual agreed price of the land could not have been determined. In my judgment the whole transaction is inconsistent with the theory of good faith. Men of good business capacity, as the plaintiff is conceded to be, do not transact important business in this way.

190 There seems to be no *doubt* that the parties commenced living together as husband and wife in the fall of 1873; and, while neither party in this case is probably entirely blameless, the testimony of the plaintiff, in his attempt to evade the fact that he had held defendant out to the world as his wife, has a tendency to weaken the effect of his testimony on other points; and the entire failure of plaintiff to prove the charges of adult-ry against his wife is to be taken against him. These are charges which a man with a proper appreciation of the domestic relation would hesitate to make against the mother of his children under any circumstances, and where the proof utterly fails, as in this case, shows a very debased condition of mind. Outside of the testimony of defendant as to harsh and cruel treatment, plaintiff himself admits of having struck her on one occasion. A distinguished writer has said.

"He who lays his hand upon a woman, save in the way of kindness, is a wretch, whom it were base flattery to call a man."

This sentiment while poetically expressed, is literally true for, no matter what the provocation may be, there is no palliation or excuse for this brutal offense. Plaintiff also admits having been drunk several times during the last two years and the testimony outside of his own admission shows that he has been under the influence of liquor a considerable portion of the time; to such an extent at least, that he is evidently not a proper person to be intrusted with the care and guardianship of the children. Taking all the circumstances of the case into consideration without further particularizing, we think there was no abuse of discretion by the judge who tried the case and that the judgment should therefore be affirmed, including the allowance of $150 for services of defendant's attorneys in this court, and it is so ordered.

Hoyt, Scott and Stiles, JJ., concur.
Anders, [illegible], not sitting.

191 Mr. MATTERS: We now offer in evidence also pages 417-418-419-420-421 and 422 of the 2nd Vol. Washington Reports, relating to the case of Webster *vs.* Webster.

Mr. HAINER: That is objected to as incompetent, irrelevant and immaterial under the issues in the case and no foundation laid for its introduction.

Objection overruled. Exception.

Pages offered received and read in evidence, as shown at page 16*d* hereof.

Mr. MATTERS: We also offer in evidence the opinion in the case of Field *vs.* Field, beginning on page 441, and ending on page 447 of the same volume.

Mr. HAINER: That is objected to as incompetent, irrelevant and immaterial under the issues in this case, and no foundation laid for its introduction.

Objection overruled. Exception.

The Opinion offered is received and read in evidence as shown at pages 16*h* hereof.

Mr. MATTERS: The plaintiff now offers in evidence Exhibit C the same being an abstract of title to the premises in controversy, consisting of two sheets together with all the entries thereon, and the certificates thereto and endorsements thereon and Exhibits A, B, C, D, E, and F, thereto attached, all of the foregoing being prepared and certified by bonded abstractors.

192 Mr. HAINER: To the introduction of which exhibit in evidence the defendant Elizabeth Eastin objects for the reason that the same is incompetent, irrelevant and immaterial, and the said Elizabeth Eastin further specifically objects to so much of said abstract as relates to the entry of a decree in the case of E. W Fall *vs.* Sarah S. Fall and which is marked Exhibit "A" attached to said abstract; and for the further reason that the same is incompetent, irrelevant and immaterial and no authority of law exists for the filing or recording of said decree in the office of the County Clerk,

TAXES.

1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888 ✓
1889 ✓
1890
1891
1892

None

193-a

We, the undersigned, do hereby certify that th
unpaid upon the lands described in the within abst
tax sales of said land unredeemed, and that no t
thereon, except as above shown.

Dated, May 20th 1889

Re-examined

W

JUDGMENTS, MECHANICS' LIENS, SUITS, ETC.

DATE	PLAINTIFF	DEFENDANT	AMOUNT	HOW AND WHEN SATISFIED
	None			
	O/K			

...re no taxes due and ...nd that there are no ...eds have been given

...urt.

...bstracters.

I, the undersigned, do hereby certify that there are no judgments or suits against any of the within named parties, pending or on record in the District Court of the within named County which are liens upon any of the land described in the within abstract, or which in any way affect the title to said lands, except as above shown.

WITNESS my hand and seal, this 20th *day of* May *189*/

(Seal)

W. P. Hellings

Clerk District Court, Hamilton *Co., Neb.*

EN SATISFIED

CERTIFICATE OF ABSTRACTERS.

We, the undersigned, certify that we have carefully examined the title to the lands described in the within abstract, and that it is a full and correct abstract of all conveyances upon record affecting the within described land.

that we have examined the records of all the conveyances therein named, and they are properly executed and properly indexed. And we further certify that there are no mechanics' liens ~~shown upon the records of~~ on file in the office of the County Clerk of Hamilton County, Nebraska, against any of the within named parties, or against the lands described within.

WITNESS our hands this 11" *day of* May *18*99

W Elbert

Abstracters.

Re-certified
May 20 1899
W E Elbert
Abstracter

RE-EXAMINATION.

We, the undersigned, do hereby certify that we have made a careful examination of the title to the lands in the within described abstract, and find no ~~conveyances, judgments suits pending or~~ liens ~~of any kind~~ affecting said lands since date of above certificate, except a mortgage for

One Thousand DOLLARS.

from Edmund W. Guy Sarah S Fall

to THE EQUITABLE TRUST CO~~MPANY OF OMAHA~~.

WITNESS our hands this 7" *day of* June *18*99

W E Elbert

Abstracters.

20174

LOAN NO. 2147

Edmund W Fall Guy
Sarah S Fall

TO

THE EQUITABLE TRUST CO.,

OF OMAHA.

ABSTRACT OF TITLE

TO

SW¼

Section 12

Township 11

Range 7

County of Hamilton

State of Nebraska.

COMPILED FOR

THE EQUITABLE TRUST CO.,

OMAHA, NEBRASKA.

193-b

ABSTRACT OF TITLE to the S W 1/4

Hamilton Republican Pr't'g Co.-130-2M

No.	GRANTOR	GRANTEE	DESCRIPTION — PART OF SECTION
1	United States	Peter Dick	S W 1/4
2	— — —	Edmund W. Fall	S W 1/4
3	Peter Dick + wife	Edmund W. Fall	S W 1/4
4	Edmund W Fall & wife	John W Haworth	S W 1/4
5	John W Haworth (single)	Edmund W Fall and Sarah S Fall	S W 1/4
6	Peter Dick & wife	Henry R Wilson Jr	S W 1/4
7	Henry R. Wilson Jr	Peter Dick	S W 1/4
8	Edmund W Fall & wife	Phoenix Mut. Life Ins. Co.	S W 1/4
9	Phoenix Mutlife Ins. Co.	Edmund W. Fall	S W 1/4
10	Edmund W Fall & wife	Robert E. Moore	S W 1/4
11	Robert E Moore by Thos. W Moore his atty in fact	Edmund W Fall	S W 1/4
12	Edmund W Fall & wife Sarah S.	Equitable Trust Co	S W 1/4
13	Robert E Moore	Thos. W Moore	S W 1/4
14	Equitable Trust Co by Pres't & Sec'y	Mut. Benefit Life Ins. Co	S W 1/4
15	E. W. Fall vs	Sarah S Fall	S W 1/4
16	E W Fall	William H Fall	S W 1/4
~~17~~	State of Nebraska Hamilton Co. ss} In consideration of	the full payment of the de	
17 ~~18~~	E W Fall	Elizabeth Eastin	Undivided Share of S W 1/4
18 ~~19~~	Sarah S Fall vs	Edmund Webster Fall et. al	S W 1/4
19 ~~20~~	W J Scott Commissioner	Sarah S Fall	S W 1/4

of Section 12, Township 11 North, Range 7 W of 6th P.

TION Sec.	Twp.	Range	Acres	Kind of Instrument	DATE Month	Day	Year	WHEN FILED Month	Day	Year	CONSIDERATION Dollars	Cts.	RECORD Book	Page	Before Whom and Where Acknowled
12	11	7	160	Patent	Feby	20	1877	Sept	6	1878			C	25	
12	11	7	160	W.D.	Oct	1	1879	Oct	6	1879	780	00	2	452	N.P. Clay Co. Nebr.
12	11	7	160	W.D.	Oct	1	1879	Oct	15	1879	780	00	6	190	N.P. Clay Co. Nebr.
12	11	7	160	W.D.	May	7	1887	May	7	1887	500	00	7	623	N.P. Clay Co. Nebr.
12	11	7	160	W.D.	July	31	1888	July	31	1888	500	00	8	474	N.P. Hamilton Co.
12	11	7	160	Mortgage	Mch	8	1878	Sept	7	1878	574	00	B	196	N.P. Atlanta Co. N.Y.
12	11	7	160	Release	Mch	10	1883	Oct	13	1883	574	00	M	460	N.P. N.Y. Co. N.Y.
12	11	7	160	Mortgage	Dec	2	1884	Dec	10	1884	600	00	P	49	N.P. Hamilton Co.
12	11	7	160	Release	May	21	1889	June	6	1889	Rayt.		15	112	N.P. Hartford Co.
12	11	7	160	Mortgage	Dec	2	1884	Dec	10	1884	60	00	P	144	N.P. Hamilton Co.
12	11	7	160	Release	Jan	4	1889	Jan	6	1889	Rayt		15	112	N.P. Lancaster Co.
12	11	7	160	Mortgage	May	18	1889	May	20	1889	1800	00	16	232	N.P. Hamilton Co.
12	11	7	160	Power of Attorney	June	16	1888	Mch	6	1888			Misc 2	253	N.P. Lancaster Co.
12	11	7	160	Assignment	Aug.	22	1890	Sept	11	1890	100	000	20	96	N.P. Douglas Co. Ne.
12	11	7		Decree				Nov.	5	1895			R	412	See copy hereto attached
12	11	7		Mortgage	May	24	1895	June	10	1896			38	217	N.P. Kings Co. Wash.
debt as evidenced by the instrument recorded on this page, I do hereby discharge and cancel the same of re															
12	11	7		Warranty Deed	April	7	1896	April	11	1896	1000	00	R	555	N.P. Sac Commrs. 6/29/97 Lancaster Co. Neb.
12	11	7		Lis Pendens	March	24	1897	March	29	1897			3	571	See copy hereto at
12	11	7		Commissioners Deed	July	3	1896	July	12	1897	1	00	8	202	See copy hereto at

6th P. M., County of Hamilton State of Nebraska.

and Where Acknowledged	Official Seal	WITNESS	REMARKS
Nebr.	Seal	One	Deed not signed sub. to Mortgage $574.00 assumed by Grantee
Nebr.	Seal	One	Sub. to $574.00 mtg.
Co. Nebr.	Seal	One	
ilton Co. Nebs.	Seal	One	
ex Co. N.J.	Seal	One	
Co. N.J.	Seal	Two	Releases "B" Page 196
ilton Co Nebr	Seal	Two	
ford Co. Conn	Seal	Two	Releases "S" Page 49
ilton Co Nebr	Seal	Two	
aster Co Nebr	Seal	One	Release "P" Page 144
ilton Co Nebr	Seal	One	
aster Co Nebr.	Seal	One	Power to release Mortgages in Nebraska
ex Co Nebr.	Seal	one	Assigns No 12
reto attached, Exhibit "A"			
Co Washington	Seal	Two	Released on margin of record as follows:
the same of record, Dated Mch 29th 1897, Wm H Fall, Attest: Gust Peterson, County Clerk, Seal rm. 4. 6/29/99			
ware Co Colfax	Seal	One	
reto attached	Exhibit "B"		
reto attached	Exhibit "C"		

of Hamilton County, Nebraska, and the same forms no part of a legal chain of title to the premises in controversy. For the further reason that the same is not competent as constructive notice to this objecting defendant or others interested therein. And the said Elizabeth Eastin further and specifically objects to the introduction of so much of said abstract as relates to a deed purporting to be executed by W. T. Scott Commissioner to Sarah S. Fall, and which is designated in said abstract as Exhibit "C" for the reason that same is incompetent, irrelevant and immaterial, forming no part of the chain of title to the premises in controversy. And the said Elizabeth Eastin further and specifically objects to so much of said abstract as relates to a decree of this court in the case of Sarah S. Fall *vs.* Edwin W. Fall and others and which is designated as Exhibit "D" for the reason that same is incompetent, irrelevant and immaterial and no authority of law exists for the filing or recording of the same
193 in the office of the County Clerk of Hamilton County, Nebraska, nor is the same any part of the chain of title to said premises, nor is the same constructive notice to the said Elizabeth Eastin or anyone interested in said premises.

Objection overruled. Exception.

Abstract of title Exhibit "C" received in evidence as shown at page — hereof, together with the certificates and all entries and exhibits thereon and thereto, see page 19*a* hereof.

(Here follows Exhibit C, marked pp. 193*a* and 193*b*.)

193c STATE OF NEBRASKA,
Hamilton County:

We hereby certify that the assignment from the Equitable Trust Co. to the Mutual Benefit Life Insurance Co., entered by us at line 14 of the within abstract, is the only assignment by records of the Mortgage at line 12.

Sept. 11th 1890.

W. E. WENT, *Abstractor.*

Mr. MATTERS: We rest.

Mr. SMITH: The defendant Elizabeth Eastin now moves the court for a judgment of dismissal in this case as against her for the reason that the facts stated in plaintiff's petition do not constitute a cause of action, or entitle the plaintiff to the relief demanded as against the defendant Elizabeth Eastin, and for the further reason that under the pleadings and the evidence in this case the defendant Elizabeth Eastin is entitled to a judgment of dismissal.

Motion overruled. Exception.

194 EXHIBIT "A."

Filed Nov. 5th, 1895, 8 A. M. W. C. Bailey, Co. Clerk.

E. W. FALL
vs.
SARAH S. FALL.

Decree.

In the Superior Court of the State of Washington in and for the County of King.

No. 20136.

E. W. FALL, Plaintiff,
vs.
SARAH S. FALL, Defendant.

Findings of Fact, Conclusions of Law, and Decree.

Come again the parties in person and by their attorneys and this cause is duly submitted to the Court for trial, and the Court having heard the evidence and being fully advised in the premises finds the facts as follows:

1. That the plaintiff E. W. Fall, and the defendant and cross complainant Sarah S. Fall, intermarried in Boone County Ind. on the 10th day of October 1876, and ever since have been and now are husband and wife.

2. That for more that three years last past the plaintiff and de-

fendant have resided together as such husband and wife in Seattle, Washington.

3. That no children have been born to said parties as the issue of said marriage.

4. That said plaintiff and defendant while living together as such husband and wife accumulated property of the value of about $5000.00 and that plaintiff in order to obtain a medical education and properly prepare himself for the practice of medicine, expended a large amount of said property, leaving the following property to-wit:

The S. W. ¼ of Sec. 12 Twp. 11 N. Range 7 in Hamilton County Nebraska, together with an interest in certain crops grown and growing on said land, the same being a farm under cultivation with buildings and outbuildings of the reasonable value of $3000.00 upon which there is a mortgage executed by plaintiff and defend-
195 ant for the sum of $1000.00; also certain personal property consisting of household furniture now in the possession of the defendant of the value of $50.00 and certain personal property consisting of office furniture and fixtures, library and medical instruments and appliances of the value of $100 now in the possession of the plaintiff and that said plaintiff and defendant have no other property whatever.

5. That for more than two years last past the plaintiff has been addicted to drinking intoxicating liquors and becoming intoxicated and has been rough, abusive, quarrelsome and has abused and mistreated the defendant in such *scull* and inhuman manner, cursing her, calling her names, striking her to such an extent as to render life a burden to her.

6. That plaintiff is a strong able bodied man, well educated and a competent and skillful physician and surgeon, and in every respect able to earn a living and accumulate money and property; that the defendant is a woman of fragile health without strength or ability to earn a living or to accumulate property or money.

7. The court finds that the defendant and cross complainant Sarah S. *Hall* is entitled to judgment and decree of divorce and is entitled to have set off to her that certain personal property, consisting of household goods and furniture now in her possession and that certain tract of real estate above described towit:

The S. W. ¼ of Sec. 12 Twp. 11 N. range 7 in Hamilton County Nebraska together with the appurtenances thereto an- all crops grown or growing thereon for the year 1895, and that the plaintiff E. W. Fall is entitled to the whole of the personal property consisting of office furniture and fixtures library, medical instruments and appliances heretofore mentioned now in his possession.

Conclusions of Law.

As conclusions of law upon the special facts as aforesaid the court finds.

1. That the plaintiff is not entitled to a decree of divorce in said cause, but that defendant and cross complainant, Sarah S. Fall, is

entitled to a decree of divorce ag 'nst the plaintiff dissolving the bonds of matrimony heretofore and now existing between them.

2. That the defendant and cross complainant Sarah S. Fall is entitled to a decree of this court setting apart to her as her own separate property forever the personal property consisting of household goods, furniture and fixtures now in her possession and the certain tract of real estate to-wit:

The S. W. 1/4 of Sec. 12 Twp. 11 N. range 7 in Hamilton County Nebraska, with all the appurtenances thereto and the crops grown and growing thereon for the year 1895 and is entitled to a decree of this court causing said property to be conveyed to her in fee simple, free and clear of any claim or incumbrance of the plaintiff to the whole or any part thereof.

3. That the plaintiff E. W. Fall, is entitled to a decree setting apart to him as his own separate property free of any claim or incumbrance of the said defendant all that personal property heretofore described consisting of office furniture and fixtures medical library medical instruments and appliances now in his possession.

Decree.

1. It is therefore considered, ordered, adjudged and decreed by the court that the bonds of matrimony heretofore existing between the plaintiff and the defendant are now, at the prayer of said defendant dissolved, cancelled, annulled, set aside and held for naught.

2. That the certain real estate heretofore belonging to the plaintiff and the defendant, towit:

The S. W. 1/4 of Sec. 12 twp. 11 N. range 7 in Hamilton County, Nebraska, being a farm in cultivation together with the appurtenances thereto and the crops grown or growing thereon for the year 1895, be and the same is hereby set apart to the defendant Sarah S. Fall as her own separate property forever, free and unincumbered from any claim of the plaintiff thereto, and that said E. W. Fall, is hereby ordered and directed by the court to convey all his right, title and interest in and to said real estate to said Sarah S. Fall within five days from the date of this decree.

3. That the certain personal property consisting of household furniture now in the possession of the defendant be and the same is hereby set apart to her as her own separate property forever, free and unincumbered from any claim of the plaintiff E. W. Fall.

197

4. That the certain personal property hereinbefore described consisting of office furniture and fixtures, medical library, instruments, and appliances now in the possession of the plaintiff be and the same are hereby set apart to said E. W. Fall as his own separate property, forever free and clear of any claim or incumbrance of the *plaintiff*.

5. It is further ordered, adjudged and decreed that neither said plaintiff nor said defendant shall contract any marriage for a period of six months from this date.

That each of the parties to this action shall pay his or her own costs and neither shall recover any costs from the other.

Dated this 5th day of October 1895.

T. J. HUMES, *Judge.*

Filed Oct. 7, 1895.

F. W. GORDON, *Clerk.*

STATE OF WASHINGTON,
County of King, ss:

In the Superior Court of King County, 1299, State of Washington.

20136.

E. W. FALL, Plaintiff,
vs.
SARAH S. FALL, Defendant.

I, F. W. Gordon, County Clerk of King County, and *ex-Officio* clerk of the Superior Court of said county, do hereby certify that I have compared the foregoing copy with the original decree of divorce in the above entitled cause as the same appears on file and of record in my office and the same is a true and perfect transcript of said original and of the whole thereof.

Witness my hand and the seal of the said Superior Court at my office in Seattle this 26th day of October 1895.

[SEAL.]

F. W. GORDON, *Clerk.*
By J. B. GORDON,
Deputy Clerk.

198 EXHIBIT "B."

Filed M'ch 29th, 1897, 9.25 A. M. Gust Peterson, County Clerk.

In the District Court of the Fifth Judicial District of the State of Nebraska within and for the County of Hamilton.

SARAH S. FALL, Plaintiff,
vs.
EDMUND WEBSTER FALL, WM. H. FALL, & ELIZABETH EASTMAN, Defendants.

Notice of Lis Pendens.

To whom it may concern:

Notice is hereby given that on the 27th day of March 1897, an action was commenced in the District Court of the State of Nebraska, within and for the County of ——, wherein Sarah S. Fall is plaintiff and Edmund Webster Fall, William H. Fall and Elizabeth Eastman, Defendants, the object and prayer of which petition is to have de-

clared null and void a certain mortgage deed from Edmund W. Fall to said William H. Fall and a certain deed from Edmund W. Fall to said Elizabeth Eastman and to quiet plaintiff's title to the land in said instruments described, towit:

The South West quarter of section twelve (12) in township eleven (11) north, range seven (7) west of the 6th P. M. in said Hamilton County and to obtain a general relief.

Dated at Aurora Nebraska, this 29th day of March, eighteen hundred and ninety seven.

SARAH S. FALL, *Plaintiff.*
By JOHN WILEY &
A. W. AGEE, *Her Attorneys.*

199 EXHIBIT "C."

Commissioner's Deed.

Com'n's Deed. Filed July 12", 1897, 5 p. m. Gust Peterson, County Clerk.

W. T. Scott, Commissioner,
to
Sarah S. Fall.

This indenture made and entered into this 3rd day of July 1896, by and between W. F. Scott, a commissioner appointed by the Superior Court of King County, State of Washington in the case of E. W. Fall *v.* Sarah S. Fall No. 20136, party of the first part and Sarah S. Fall of Seattle, Washington party of the second part:

Witnesseth: That the said party of the first part in conformity with an order made by the Superior Court of King County, State of Washington, in the above case, and for and in consideration of the sum of One Dollar, lawful money of the United States, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey and confirm unto the said party of the second part and to her heirs and assigns the following tract of land situated in Hamilton County, Nebraska: The South West Quarter (¼) of section Twelve (12) Township Eleven (11) Range Seven (7) together with the appurtenances.

To have and to hold the said premises unto the said party of the second part and to her heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

W. T. SCOTT, [SEAL.]
Commissioner.

Signed, sealed and delivered in presence of,

____ ____.

200 STATE OF WASHINGTON,
County of King, ss:

This is to certify, that on this 3rd day of July 1896, before John E. Humphries, a Notary Public, in and for the State of Washington, residing at Seattle, duly commissioned and sworn, personally came W. T. Scott, commissioner above named, to me known to be the individual described in and who executed the within instrument as such commissioner and acknowledged to me that he signed and sealed the same as free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year first above written.

JOHN E. HUMPHRIES,
Notary Public as Aforesaid.

Examined and approved by the Court this 3rd day of July, 1896.
T. J. HUMES, *Judge.*

201 EXHIBIT "D."

Filed Febr. 21, 1898, 10 a. m. Gust Peterson, County Clerk.

Decree.

District Court to Sarah S. Fall:

In District Court, Hamilton County, Nebraska.

SARAH S. FALL, Plaintiff,
vs.
EDMUND WEBSTER FALL, WILLIAM H. FALL, and ELIZABETH EASTON, Defendants.

Now, to-wit: On this 30th day of September A. D. 1897, this cause having heretofore been submitted and taken under advisement by the Court, came on for final determination and the Court being fully advised in the premises finds by the answer of the defendant William H. Fall, that he claims no interest or lien upon the real estate described in plaintiff's petition, and that he in fact has no interest therein. The Court further finds all the allegations of the plaintiff's petition to be true and that neither of the defendants Edmund Webster Fall and Elizabeth Eastern has any interest in or lien upon the premises in said petition described, towit: The South West Quarter of Section Twelve (12) in Township Eleven (11) North, Range Seven (7) west of the Sixth Principal Meridian in Hamilton County Nebraska. That the plaintiff is the sole owner in fee simple of said premises and that full faith and credit should be given to the judgment of the Superior Court of King County in the State of Washington as set forth in said petition.

It is therefore considered, adjudged and decreed that full faith and credit be given to the judgment of the Superior Court of King

County in the State of Washington in the case mentioned and described in said petition. That the plaintiff Sarah S. Fall, is the owner in fee simple title of the South West Quarter of said Section Twelve (12) in Township Eleven (11) North, Range Seven (7) west of the Sixth Principal Meridian in Hamilton County, Nebraska, and that her title thereto be and the same is hereby quieted and confirmed and that neither of the said defendants Edmund Webster Fall, William H. Fall, nor Elizabeth Easton has any right title or interest in or lien upon said premises nor any part thereof, and they are and each of them is hereby excluded from
202 claiming any interest therein or lien thereon.

It is further ordered that the plaintiff pay the costs of this action taxed at $——.

STATE OF NEBRASKA,
Hamilton County, ss:

I, J. B. Cunningham, Clerk of the District Court within and for Hamilton County, State of Nebraska, do hereby certify that the foregoing is a true and correct copy of the decree rendered in the case of Sarah S. Fall *vs.* Edmund Webster Fall, *et al.* which is of record in this office and recorded in Journal six at page- 511 and 512 thereof.

In Witness Whereof I have hereunto set my hand and affixed the seal of said District Court at Aurora, Nebraska, this 21st day of February, 1897.

[SEAL.] J. B. CUNNINGHAM,
Clerk of District Court.

203 EXHIBIT "E."

Lis Pendens.

Filed July 3, 1902, at 2.40 p. m. J. A. Isaman, County Clerk; J. S. Hedgcock, Deputy.

ELIZABETH EASTIN, Plaintiff,
vs.
SARAH S. FALL ET AL.

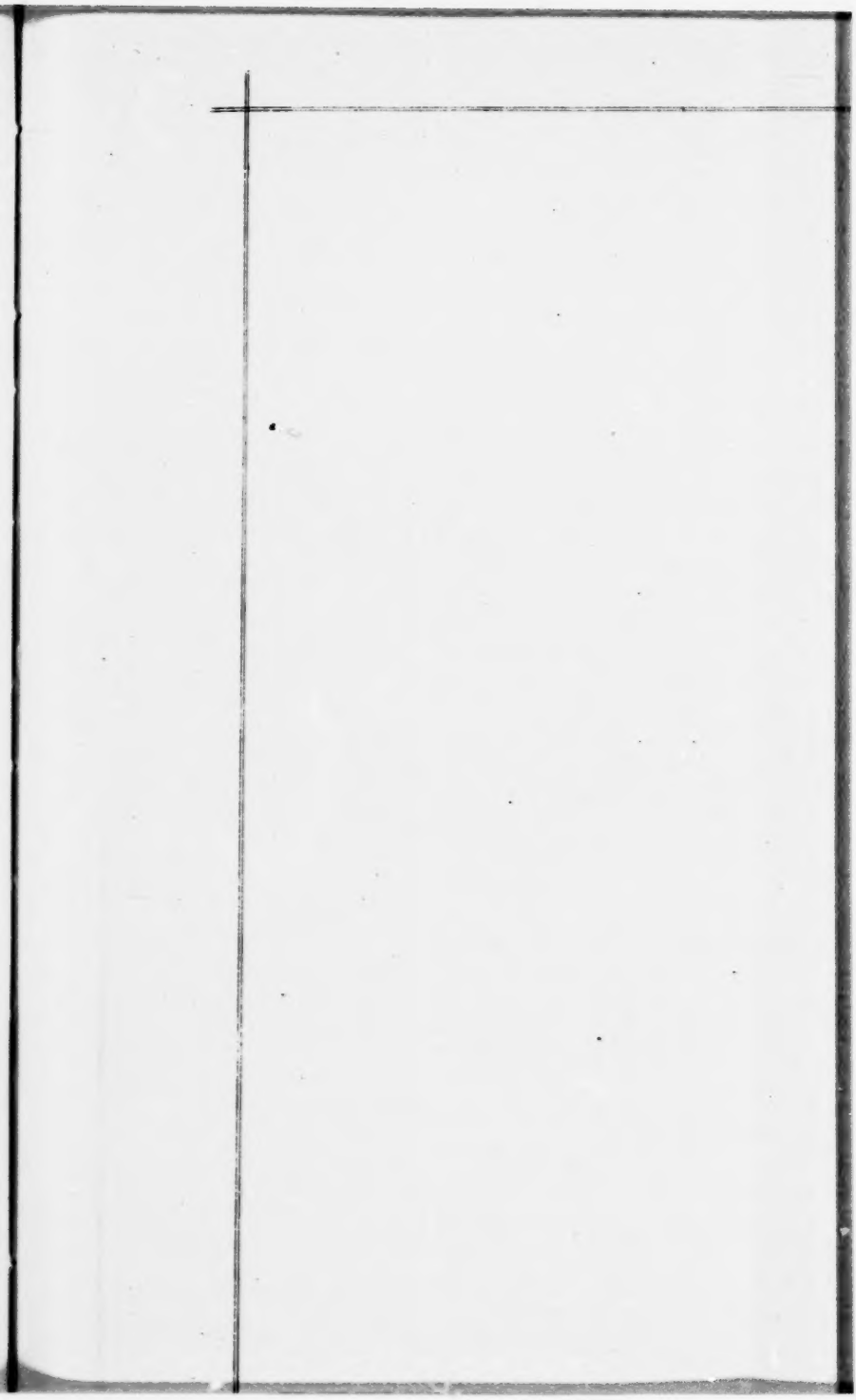
In the District Court of Hamilton County, Nebraska.

ELIZABETH EASTIN, Plaintiff,
vs.
SARAH S. FALL, LIBBIE HARLAN HAWORTH, WILEY and ANDREW WEDIN, Defendants.

Lis Pendens.

To whom it may concern:

You and each of you are hereby notified that on the 3rd day of July A. D. 1902, the above named plaintiff began her action in the



No. 836

Abstract of Title

TO

The South West ¼ of Section 12, Township 11 North, Range 7 West of 6th P. M. County of Hamilton State of Nebraska.

E & C 2 Sheets 8 x 4 Pds
12/15-11403
Open

JACOB NORTH & CO., PRINTERS AND BINDERS, LINCOLN, NEB.

1

TAXES, TAX SALES, TAX LIENS, ETC.

YEAR	CONDITION OF TAXES	YEAR	CONDITION OF TAXES
1902	$35.01		

STATE OF NEBRASKA, County of Hamilton, ss. It is hereby certified by the undersigned that there are no taxes due and unpaid upon the lands described in the Caption of the within Abstract; that no tax sales thereof are unredeemeed, and no tax deed has been given therefor, of record except as above shown.
dated Oct 1, 1902

Frank A Burt Bonded Abstracter.

JUDGMENTS, SUITS PENDING, ETC.

Docket No.	PLAINTIFF	DEFENDANT	AMOUNT	DATE	Filed in Dist. Court	REMARKS

STATE OF NEBRASKA, County of Hamilton, ss. It is hereby certified by the undersigned that there are no taxes due and unpaid upon the lands described in the Caption of the within Abstract; that no tax sales thereof are unredeemed, and no tax deed has been given therefor, of record, except as above shown.
dated Oct 1, 1902 Frank A Burt Bonded Abstracter.

JUDGMENTS, SUITS PENDING, ETC.

Docket No.	PLAINTIFF	DEFENDANT	AMOUNT	DATE	Filed in Dist. Court	REMARKS

JUDGMENT CERTIFICATE

STATE OF NEBRASKA,
County of 205 } ss.

It is hereby certified by the undersigned that there is no judgment, nor transcript of judgment, against any of the grantors or grantees mentioned in the within Abstract, nor suit pending by or against any of said parties, of record or on file in the office of the Clerk of the District Court of said County, which in any manner encumbers or affects the title to the land described in the Caption of the within Abstract, except as above shown, as appears from a careful examination of the Judgment Dockets and Indexes of said Court.

Dated ..... at ..... o'clock ..... M. ..... Abstracter.

The above Judgment Certificate is hereby re-certified as of this date.

Dated ..... at ..... o'clock ..... M. ..... Abstracter.

The above Judgment Certificate is hereby re-certified as of this date.

Dated ..... at ..... o'clock ..... M. ..... Abstracter.

The above Judgment Certificate is hereby re-certified as of this date.

Dated ..... at ..... o'clock ..... M. ..... Abstracter.

NOTES.

CAPTION

ABSTRACT OF TITLE

.....of 6th P. M. in.....County, Nebraska.

CERTIFICATE

STATE OF NEBRASKA, } ss.
Hamilton County. }

It is hereby ... Title, consisting of ... exhibits a full and correct abstract of all conveyan... Mechanics' Liens, upon record or filed for record in th... of said County, affecting the title to the land describe...

Dated Oct 1, 1902 at 6 o'clock P M.

No	GRANTOR	GRANTEE	RECORD Book	RECORD Page	KIND OF INSTRUMENT	CONSIDERATION Dollars	CONSIDERATION Cts.	DATED Month	DATED Day	DATED Year	ACK Month
20	Sarah S Fall w	Edmund Webster Fall et al	8	597	decree			Sept	30	1897	
21	Elizabeth Easton w	Sarah S Fall et al	4	448	Lis Pendens			Aug	3	1902	
22	Mutual Benefit Life Insurance Co by its Prest. (Corp. Seal)	Edmund W Fall & wife	43	337	Release	Payment		Dec	1	1898	Dec

hereby certified by the undersigned that this Abstract of ing of Entries No. 15 to No. 22 inclusive, onveyances and other instruments of writing, including rd in the office of the County Clerk or Register of Deeds described in the foregoing Caption. subsequent to Sept 11 1890 P M. Frank A Rust Abstracter.

The foregoing Certificate is hereby extended to include No. ..... to No. ..... inclusive of this Abstract, and same is hereby re-certified as of this date. Dated, ... at ..... o'clock ... M. ..... Abstracter.

The foregoing Certificate is hereby ex include No. ..... to No. ..... in this Abstract, and same is hereby re-cert this date. Dated, ... a o'clock ... M. ..... A

ar	ACKNOWLEDGED Month	Day	Year	BEFORE WHOM ACKNOWLEDGED	OFFICIAL SEAL	EXPIRATION OF COM. Month	Day	Year	NO. OF WITNESSES	FILED FOR RECORD Month	Day	Year	HOUR a.m.	p.m.	DESCRIPTION OF PROPERTY Part of Section, or Name of City, Village, Addition of Subdivision
97										Feby	21	1898			S W 1/4
2										July	3	1902			S W 1/4
98	Dec	1	1898	Chas. E Weeks Master in Chancery Essex Co. New Jersey	None	Continued during Life				Dec	12	1898			No Description Given

by extended to ...inclusive of re-certified as of ...at... ...Abstracter.	The foregoing Certificate is hereby extended to include No.... to No....inclusive of this Abstract, and same is hereby re-certified as of this date. Dated, ...at... o'clock....M. ...Abstracter.	No....entered upon this Abstract and correctly abstracted by the undersigned, this ...day of ... ...Abstracter.

PROPERTY					REMARKS
ion	Sec. Lot	Twp. Blk.	Rng. Lot	Acres Blk.	
	12	11	7		See Exhibit "D" Deeds attached
	12	11	7		See copy Deeds attached Exhibit "E"
					See copy of certificate attached to this release Exhibit "F"
					Releases No. 12 Mtg recorded in Book 16 page 232

above entitled cause and court against the above named defendants for the partition of the following described premises and real estate situate in Hamilton County, Nebraska, to-wit:

The South west Qu-rter of Section number twelve (12) in Township Eleven (11) North, Range number Seven (7) West of the sixth Principal Meridian; and to recover of and from said defendants the rents and profits of said lands commencing with the year 1896 and from thenceforth.

Plaintiff claims that she is the owner of an undivided one-half ($\frac{1}{2}$) of said premises in fee simple and that the said defendant Sarah S. Fall is the owner of a similar estate and interest in said premises and that the remaining defendants have no interest whatever therein.

Special reference is hereby made to said petition and the same is made a part hereof as fully as though extended at length herein.

Dated this 3rd day of July A. D. 1902.

ELIZABETH EASTIN,
By HAINER & SMITH,
Her Attorneys.

204–300 EXHIBIT "F."

STATE OF NEW JERSEY,
County of Essex, ss:

I, William O. Kuebler, Clerk of the County of Essex in the State of New Jersey and Clerk of the Inferior Court of Common Pleas and Quarter Sessions in and for said County, do hereby certify that said court is a court of record, that said Chas. E. Weeks whose name is subscribed to the certificate of acknowledgment of proof of the foregoing instrument was at the date thereof a Master in Chancery of New Jersey residing in said County, duly commissioned and sworn and authorized by the laws of the State of New Jersey to take and certify acknowledgments of deeds and other instruments in writing; that I am well acquainted with the hand writing of the said Master in Chancery; that I verily believe that the signature of said Charles E. Weeks subscribed to said certificate is genuine and that the said instrument is executed, acknowledged and proved according to the laws of the State of New Jersey.

In testimony whereof I have hereunto set my hand and affixed the seal of my office at the City of Newark in said County of Essex this first day of December, A. D., 1898.

[SEAL.] WILLIAM O. KUEBLER.

[10 cts. I. R. 12-1-98. W. O. K.]

* * * * * * *

(Here follows abstract of title, marked p. 205.)

301 ELIZABETH EASTIN, being called as a witness on behalf of the defendants and first duly sworn, testified as follows:

Direct examination.

By Mr. HAINER:

Q. You may state your name?
A. Elizabeth Eastin.
Q. And what is your age?
A. Sixty six.
Q. What relation are you to Sarah S. Fall, the plaintiff in this case?
A. She used to be my sister-in-law the wife of my brother.
Q. And William H. Fall and Edwin W. Fall, are your brothers?
A. Yes sir.
Q. How long have you known Sarah S. Fall?
A. I think about a year before they were married, I couldn't be sure.
Q. Are you married now, Mrs. Eastin?
A. No sir, I am a widow.
Q. When were you married?
A. I was married in '63.
Q. Where have you lived since that time?
A. Well I have lived in Charleston, Illinois, most of the time, I lived seven or eight years at Indianapolis and about a year and a half at Salt Lake City. I think about a year at Salt Lake City.
Q. Mrs. Eastin did you have any business transaction with your brother Ed Fall as he is called, and who is also named as defendant in this action, in September 1893?
A. Yes sir.
302 Q. What was that transaction?
A. I loaned him $1,000.00.
Q. Where was that transaction had?
A. W. H. Fall, my brother's house.
Q. And where in what place?
A. The same place you were a minute ago, the same room.
Q. That is in Aurora, Nebraska?
A. In Aurora, yes sir.
Q. How did you come to make that loan to your brother?
A. Well I came out here to buy property. I didn't come here to make him a loan, but I was overpersuaded by William to loan him the money, because he wanted to borrow some money from him.

Mr. MATTERS: We move to strike out the answer as incompetent and immaterial.
Motion overruled.
Exception.

Q. What evidence did you take of that transaction at that time?
A. Well I don't know how to answer that as you have asked it.
Q. Did you get anything from Ed and William at that time?
A. I got the note.

Q. You may examine the note which has been introduced in evidence, Exhibit "D" which I hand you and state if you have ever seen that note before?

A. Yes sir, that is the note I sent to W. H.

Q. Is that the note of which you have been testifying?

A. Yes sir, that is the identical note.

Q. And is that the one which was given at that time as evidence of that loan?

A. Yes sir, the identical note.

Q. Did you see the signatures appended to that note?

A. Yes sir I did.

303 Q. Whose signature?

A. W. H. Fall and E. W. Fall.

Q. That is your brother Edwin W. Fall?

A. Yes sir.

Q. Was that note delivered to you at that time?

A. Yes sir.

Q. What did you give for that note?

A. I gave $1000.00.

Q. To whom did you give that?

A. I gave it to Edwin W. Fall.

Q. How did W. H. Fall come to sign that note?

A. To give me security, that is what he promised to do, before I would promise to let him have the money.

Q. What agreement was made about that, if any, prior to the making of the loan?

Mr. MATTERS: That is objected to as incompetent irrelevant and immaterial and the facts stated in defendant's answer constitute no defense to plaintiff's cause of action in this suit.

Objection overruled. Exception.

A. That he would go on as security to the note?

Q. Where did you pay the $1000.00 to Ed that you have testified to?

A. Down at William H. Fall's house.

Q. When with respect to the time that note was made?

A. The note was delivered to me when the money was paid, right then and there.

Q. Now you may state whether that note was paid at maturity?

A. No sir.

Q. Was any part of it, either principal or interest?

A. Not a dollar.

Q. When if at all was that note ever paid and how tell all the facts?

304 A. I- was paid by him deeding his half of the farm to secure me on my debt.

Mr. MATTERS: We ask to have the answer stricken out until we can get an objection in.

Motion sustained. Exception.

Mr. MATTERS: We object to the question as incompetent and irrelevant.

Objection overruled. Exception.

A. I received that deed in payment of this note from E. W. Fall in San Francisco from E. W. Fall to W. H. Fall. It was sent here for record and W. H. Fall sent it to me after it was recorded and I sent him back this note to send to E. W. Fall, E. W. Fall seemed to be out of existence.

Q. To whom did you send that note?

A. I sent it to W. H. Fall at Aurora, after I received the deed.

Q. That is the same W. H. Fall who was one of the signers of the note?

A. Yes sir. That William H. Fall.

Q. Had you had any previous correspondence with Ed Fall about the giving of this deed

A. Yes sir he had wrote me about it when he was sick.

Q. Where was that letter written from?

A. From Seattle.

Q. Have you got that letter

A. Well I thought I gave that letter to you, or sent it to you. No, I guess I didn't, I guess I haven't got that letter.

305 Q. You did turn over one letter to me did you not?

A. Yes sir, I turned over a letter to you I received from Indianapolis that my sister got out of the library.

Q. That letter and your sister's letter are the only letters you turned over to me?

A. Yes sir.

Q. You may state whether or not you have in your possession or under your control any correspondence, any letters written either by your brother or yourself other than what you have already testified to?

A. No I don't think I have.

Q. Have you made search for other letters?

A. Yes sir. I searched diligently.

Mr. MASTERS: That is objected to as leading.

Objection overruled. Exception.

Q. What search did you make Mrs. Eastin for those letters?

A. Well I searched through my private papers and all but when I sold my residence I burned up a great many papers that would have been valuable if I had kept them.

Q. Did you make any inquiry from Ed Fall your brother, for letters touching these matters?

A. Yes sir.

Q. Did you make any request of him to produce letters, if any, such he had touching this transaction?

Mr. MATTERS: That is objected to as immaterial and incompetent.

Objection overruled. Exception.

A. He wrote to my sister.

306 Q. Did you make any request of him?

A. Yes sir, to search for my letters and to find out if he had any of my letters or anything concerning this case.

Q. Did you receive any letters from him. Did you receive any letters from any other person as a result of those inquiries or requests other than what you have already testified to?
A. Yes sir.
Q. Well what was it?
A. My sister looked through his private library which he sent to her.
Q. Did you get anything from your sister?
A. Yes sir.
Q. You may examine this letter which I hand you marked Exhibit "G," and state if you have ever seen that before?
A. Yes sir.
Q. Are you familiar with the signature appended thereto?
A. Yes sir.
Q. Whose signature is it?
A. My sister Mrs. D. T. Buser.
Q. How did you receive that?
A. I received—my brother wrote to her.
Q. How did you get it?
A. She sent it to me in the mail.
Q. You received it in the ordinary course of the United States mail?
A. Yes sir. I received it in the mail at Sterling Colo.
Q. You may state if there was any enclosure with that letter?
A. Yes sir, there was one.
307 Q. You may examine exhibit "H" and state if you ever saw that before?
A. Yes sir, that is a letter I wrote to my brother.
Q. To your brother Ed?
A. E. W. Fall yes sir.
Q. Is that the letter which was enclosed with this other letter from Mrs. Buser?
A. Yes sir.
Q. And that is how you came to get it?
A. Yes sir.
Q. And in response to that request?
A. Yes sir.

Mr. HAINER: We now offer in evidence Exhibit "G" and also the letter Exhibit "H."
Mr. MATTERS: We object to Exhibit "G" as wholly incompetent, irrelevant and immaterial.
Objection sustained. Exception.

(By Mr. MASTERS:)

Q. This Mrs. Buser is still alive is she?
A. Yes sir.

(By Mr. MATTERS:)

Q. And living in Indianapolis?
A. Yes sir.

(Mr. MATTERS:)

Q. You never tried to obtain her deposition?
A. No sir, but I could have got it.

Mr. MATTERS: And we object to the introduction of Exhibit "H" as incompetent and irrelevant.

Objection overruled. Exception.

Exhibit "H" received and read in evidence, as shown upon page 120 hereof.

308 Ex. H. 12/7/03. O. P. H.

Exhibit "H" follows:

CHARLESTON, ILL., *January* 15, 1896.

DEAR BROTHER ED:

Yours just Reed & Am Glad you are better Indeed you Had a close call not many get so near death's door. Will & Clifford wrote me when they reed their telegrams apprising them of your *dangerous Illness*.

Dr. Cliff was making all possible haste to go to you when he reed the 3 telegram from your Dr that you were better & possibly out of danger & haveing some very bad cases himself of the same feaver Typhoid & his own family not very well he did not go & so it all turned out for the best as it was a long cold trip in midwinter.

I am sorry you worried yourself so about what you owed me while you were so Sick and that your business is in such a shape. I think your plan or proposition is a good one that will release Will and secure me by Deeding me your interest in your Farm in Hamilton Co. Nebr

You ought to do something to make me safe you know now that Mr. Eastin is no more and I have no one to look out for me but my brothers. Mr. Eastin always told me to have brother Will to look after my business, but he is so far away and Sick so much I should like to release him on that note of one thousand dollars he is security on for you. Will paid me the note of two hundred dollars & made it alright with you did he not, I am glad to hear you say that your not sorry you are freed from your wife.

And should you choose to make your home with me after you get well enough to adjust your affairs and decide to make a change you can make your home with me. I am quite lonely since Mr. Eastins death. His mother Died one year before He & His Father one year after, they were Both past 85 years, but that's a good many out of yoour family in three years. Mr. Eastin made his will all to me. Haveing no Children living he thought it Best & made it several years Before He died. I am not so very well I Have Lagrip so bad, you Wright to brother Will and satisfy him and let me Hear at your earliest opportunity

From your sister

ELIZABETH EASTIN.

309 Ex. G. 12/9/03. O. P. H.

Exhibit "G" follows:

Old Telephone, 783.

D. T. Buser, Daily Meat Market, Dealer in Fresh, Salt, and Smoked Meats, Ham, Lard, etc., 1518 N. Alabama Street.

INDIANAPOLIS, IND., *Aug.* 1, 1902.

Mrs. Elizabeth Eastin, Sterling, Colorado.

MY DEAR SISTER: With brother Ed's permission I have searched through his private library to see if I could find any papers or letters pertaining to your case in court. You know that after he lost his health and started to travel he sent me his library and private papers to take care of until he needed them I am sorry to say I only found one that spoke of yours and his business which I think is plain enough. I will enclose it to you hoping it may be of some benefit to you. I received one from you about the same time telling me that Ed had deeded his interest in his farm in Nebraska to you for the money he owed you And remember you said you would pay me my note on Ed when you got your money. I will send it to you but I think I have lost your letter, at least I have not found it yet. Love to Charlie and Maggie and yourself.

Affectionately, your sister,

MRS. H. S. BUSER.

310 Q. Now Mrs. Eastin you may state when it was that you wrote this letter to your brother (Exhibit "H").

A. That is dated January 15, 1896.

Q. Was that the date when you sent it?

A. It must have been the date.

Q. How did you send it?

A. Sent it in the mail as I always do.

Q. You may state when this came into your hands again, after it was written and sent?

A. When I was at my sister's this summer a year ago, at Sterling I received it there, from Indianapolis, from my sister.

Q. With that other letter offered in evidence?

A. Yes sir.

Q. Had it been out of your possession all of the time from the time you sent it to your brother until your sister sent it to you?

A. Yes sir.

Q. Is the letter in the same condition now, as it was when you sent it here, except those marks which the reporter put on it?

MR. MATTERS: That is objected to as incompetent and leading.

Objection overruled. Exception.

A. Yes sir.

Q. In this letter, you use this expression "I think your plan or proposition is a good one, that will release Will, and secure me by

deeding me your interest in your farm in Hamilton County Nebraska," to what proposition did you refer here in this letter?

Mr. MATTERS: That is objected to as incompetent irrelevant and immaterial, hearsay and assuming.
Objection overruled. Exception.

311 A. He wrote me he would deed me his farm,—I didn't know that there was any division in the farm. I didn't know his wife owned part of it, he just wrote me he would deed me his farm to secure me and release Will by giving him back this note.

Mr. MATTERS: We move to strike out that part of the answer, referring to what she didn't know concerning this matter, for the reason that it is not responsive to the question.
Motion sustained. Exception.

Q. How did he write you?
A. He wrote me a letter.
Q. Have you that letter?
A. No sir.
Q. Is that one of the letters for which you have searched?
A. I have searched diligently for that letter.
Q. Have you been able to find it?
A. No sir, I have not.
Q. Now you may state what the contents of that letter were, so far as it related to this transaction of the deed.

Mr. MATTERS: That is objected to as incompetent irrelevant and immaterial, no proper foundation laid.
Objection overruled. Exception.

A. He wrote me that he was sick and was unable to pay my note, for I had been writing to him for money, and that he would deed me the farm. I don't remember whether he said his interest or anything about that. But that he would deed me the farm, and that would release Will, and I could send him the note, which I did. I received the deed later on, after that, and I sent W. H. that identical note back.

312 Q. Now, Mrs. Eastin, you may state if at the time you received that deed and returned the note, to which you have testified, to your brother Will, if you had at that time any knowledge or notice that there was any litigation over that land?

Mr. MATTERS: To that we object as leading.
Objection overruled. Exception.

A. No sir, I did not.
Q. You may state Mrs. Eastin, if at the time you made this loan to your brother Will, if you had any knowledge or notice of any trouble between your brother Ed. and his then wife Sarah S. Fall.

Mr. MATTERS: That is objected to as incompetent irrelevant and immaterial.
Objection sustained. Exception.

Mr. HAINER: We here offer to prove by this witness and she will

so testify, that at the time of making the loan in question, that she had no notice or knowledge whatever of any difficulties between Edwin W. Fall and his then wife, Sarah S. Fall.

Mr. MATTERS: That is objected to as incompetent irrelevant and immaterial.
Objection sustained. Exception.

Q. You may state Mrs. Eastin with what purpose and intention if any, you took the deed in question in this case.

Mr. MATTERS: That is objected to as incompetent and calling for a conclusion and not for a fact.
Objection overruled. Exception.

A. To secure me in payment of my note for money that I had loaned, the $1,000.00.

313 Q. Had you in any of this transaction from its commencement until its close any intention or purpose of cheating, or wronging the plaintiff Sarah S. Fall or any other person in any manner whatever?

Mr. MATTERS: That is objected to as incompetent and leading and calling for a conclusion and not for a fact.
Objection overruled. Exception.

A. I certainly did not.
Q. At the time you took the deed in question, or prior thereto had you any notice or knowledge of any decree relating to or touching this land having been made by any court?

Mr. MATTERS: That is objected to as incompetent and leading.
Objection overruled. Exception.

A. No sir, I had not.
Mr. HAINER: That is all.

Cross-examination.

By Mr. MATTERS:

Q. Mrs. Eastin you say you loaned your brother $1,000 in Aurora Nebraska?
A. Yes sir.
Q. In September 1893?
A. Yes sir.
Q. Had you talked with him about the matter before that time?
A. Not a word.
Q. Had he written to you about it?
A. Not a word.

314 Q. Had you written to him?
A. Not a word.

Q. Had there been any correspondence between you and your brother concerning this loan?
A. Not a thing.
Q. You remember giving your testimony in this matter do you

Mrs. Eastin on the 30th of January in the County Attorney's office before Mr. Jeffers the Clerk of the District Court?

A. Yes sir.

Q. Do you remember relating the circumstances of this loan in your testimony at that time?

A. I don't think I do.

Q. Do you remember of having this question asked you at that time Mrs. Eastin "Did you write to him about the note?" and you replied "No I did not write to him about the note, I didn't have no note then, I wrote him afterwards and I wrote him before about it," and this question was then asked you "Before what time do you mean"? and you answered "Before I got it I wrote to him about it, he wanted money and I wrote to him about it." Then this question was asked you "Do you remember what you wrote him"? and you answered "No, I don't remember what I wrote him, but I wrote him that he could have the money by giving me the security," now do you remember of making such statements as that?

A. No, I don't.

Q. If you made those statements——

A. I was so bothered I don't know what I did say that night. Honestly I don't know what I said about it.

Q. You profess to tell the truth?

315 A. Yes sir, but I was almost dead with heart disease, and I didn't know what I did say to tell the truth.

Q. Did you tell the truth at that time?

A. Well I aimed to.

Q. When you stated that you had written your brother about this matter, and told him that he could have the money if he gave you the security?

A. I don't remember of saying anything like that, because nothing of that kind occurred.

Q. Do you remember also, of stating at that time, that you made this loan from Charleston, Illinois?

A. No sir, I said I made that loan here.

Q. That is, your brother was here?

A. Yes my brother was here and I was here.

Q. Did you state at that time that you were here?

A. Yes sir.

Q. Do you remember, at that time did you have this letter Exhibit "H" at that time?

A. No, I didn't have it.

Q. Had you received this from your sister at that time?

A. Well I forgot whether I had or not, I think I had.

Q. And did you have it with you that night?

A. No sir, I must have had it, because I received,—Oh this letter Exhibit "H," oh yes, I guess I had this letter then of course. I thought you was talking about my letter.

Q. You knew at that time the contents of this letter did you not?

A. Yes sir.

Q. And when you were interrogated that evening about this mat-

ter you was well aware of the fact that your brother had written you that he had obtained a decree of divorce from his wife?

316 A. No sir, I didn't know nothing about that until it was all over.

Q. You knew on that night January 29th, 1903, when you gave your testimony that your brother had written you in January 1896 that he was free from his wife?

A. No sir, he never wrote me no such word.

Q. And that you had replied to him in January 1896 that you was glad that he was freed from his wife?

A. He didn't write me, when I got that letter he didn't say nothing about his wife. I don't know what I said back.

Q. When you said to him "I am glad to hear you say that you are not sorry you are free from your wife," that is in response to a letter from him where he told you that he was free from his wife?

A. That is not in response to that letter.

Q. That is in response to one you had received from him is it not?

A. Why, I don't know.

Q. Look at it and read (counsel hands witness letter). You say "I am glad to hear you say that you are not sorry you are free from your wife"?

A. That was a previous letter.

Q. That you had received from him?

A. Yes sir, but I mean I didn't know anything about their disagreement until after it was all over.

Q. This letter is in response to a notice from him that he was free from his wife, is it not?

A. No, it is not in response to the one that he was free from his wife.

317 Q. How long before that had he advised you that he and his wife was divorced?

A. Sometime in the fall.

Q. How many letters had you received from him concerning that divorce suit?

A. Not only one.

Q. Did you not on the 30th of January when you made application to open this case, state that you had never received any letters from him about the divorce?

A. About the divorce that is what I meant.

Q. Did you not testify that you had never received any communication from him?

A. I testified that I didn't know a thing about it until I sent a letter of introduction out here with Mrs. Dr. Hall nor I didn't know they had any trouble.

Q. Did you not on the 30th of January 1903, state before Mr. Jeffers the Clerk of the District Court, in giving your testimony, the following "Do you testify positively Mrs. Eastin that you have no letters now in your possession written to you by your brother E. W. Fall"? and you answered "I don't think I have, I think I destroyed all my letters." And this question was asked you "Do you remem-

ber what he corresponded with you about?" and your answer was "He corresponded with me about making out, about making over the deed? Question, "When was that," and you answered "That was in 1896." Question "What time in 1896," and you answered "It was in the spring of 1896." Question, "Have you any letters of that kind now?" you answered "no sir." Question "You knew your brother was a married man did you not?" you answered "Of course I knew it." Question, "Did you know of any divorce proceedings pending between he and his wife? you answered,
318 "Not until after it was over," Did you make those statements at that time?

A. Yes sir, I didn't have any of the letters.

Q. Did you have this letter at that time?

A. I tell you all the letters I had, I turned over to my attorneys, if I had any they had them.

Q. And this letter you turned over to your attorneys at that time?

A. I think I had.

Q. You are positive?

A. I am positive I didn't have any when I told you I didn't have any.

Q. When you said you didn't have any, that meant your attorneys had them, but you didn't is that it?

A. Yes sir, I didn't have any when I told you I didn't.

Q. You may state to the court if you ever changed this deed after you got it?

Mr. SMITH: That is objected to as incompetent irrelevant and immaterial, not proper cross examination, and no such issue as that formed by the pleadings in this case.

Objection overruled. Exception.

A. So help me God I never changed the deed.

Q. Did you cut a piece off of the bottom of it?

A. No sir I did not.

Q. That is in the same condition it was when you received it?

A. I suppose it is, I don't see no alteration in it.

319 Q. Had this piece been cut off the bottom of this deed when you got it from your brother?

A. I don't remember nothing about it, Mr. Matters, I remember I got it and I preserved it.

Q. This is the condition it was in when you got it?

A. I think it is, I know I never made any change in it, and I know my brother never made any change in it.

Q. How do you know your brother never did?

A. Well, he ain't that kind of a man.

Q. You say you had no correspondence about this money before you loaned it to him?

A. Not before I loaned it to him. I corresponded with him about other money.

Q. But about this particular thousand dollars.

A. No sir, nor you can't show nothing that I ever did.

Q. When you made that statement last January, that is not correct then?

Mr. SMITH: That is objected to as incompetent irrelevant and immaterial and not proper cross-examination.

Objection sustained. Exception.

Q. Now you say that your brother sent you the deed?

A. Yes sir.

Q. You took this deed as security did you?

Mr. SMITH: That is objected to as incompetent irrelevant and immaterial.

Objection overruled. Exception.

A. Yes sir.

Q. For what your brother E. W. Fall owed you

A. Yes sir.

320 Q. And you held it in that way from that time until the present?

A. Yes sir.

Q. Now Mrs. Eastin you have been coming constantly to Nebraska from that time until the present?

A. Yes sir, and several years before that.

Q. You knew that Mrs. Fall your former sister-in-law had possession of that land?

A. I knew she had possession of it when I got the deed. That is the first I knew of it, that she was a party to part of it.

Q. You knew that she had possession of all of it?

A. No, I did not.

Q. You learned that afterwards?

A. I learned it off of the deed.

Q. You learned it afterwards that she had possession of all of the land?

A. Oh yes.

Q. Now did you ever ask her for any of the rent?

Mr. SMITH: That is objected to as not proper cross examination, and wholly immaterial.

Objection overruled. Exception.

A. No sir.

Q. How many times were you in Aurora, Nebraska, from the time you received this deed until this suit was instituted?

A. I couldn't answer that question correctly, but I wasn't in Nebraska when I received the deed in April, I wasn't here any more until February 1898.

Q. How often have you been here from that time until the suit was brought?

A. Well I couldn't tell you that. I have been here seven or eight times in the last two years. I have been here frequently

321 Q. You never said anything to her about the rent at all did you?

A. No sir.

Q. Nor never talked with her about the place?

A. No sir.

Q. When did you decide that you had any different interest than that of holding this claim as security?

A. In a way I talked to somebody about it.
Q. Who was that?
A. Well, I couldn't tell you who it was.
Q. You disremember who you talked to?
A. I talked with my attorneys.
Q. And then you decided after your talk with them, that you didn't hold it as security?
A. No sir, I never did decide, I had my deed and I didn't know but what I had my interest.
Q. But you hold that as security for what your brother owes you
A. Yes sir.
Q. And that is all you claim now is it?
A. I claim all that is coming to me by the law.
Q. On this note?
A. Yes sir.
Q. And no more?
A. I claim all that is coming to me by the law, interest and everything else, rents and profits.
Q. Mrs. Eastin, do you remember where you were in August 1893?
A. Well I think I was in Indianapolis.
Q. Were you at the World's Fair, that year.
A. Yes sir.
322 Q. How long were you there?
A. I was there the last week in June and the first week in July.
Q. Is that all the time you were there?
A. Yes sir, I went right back from here to go to the Fair, but on account of sickness we didn't go. I intended to go back in September.
Q. And in August 1902, you wrote your sister in Indianapolis concerning these letters, or in July 1902 you wrote your sister at Indianapolis about these letters, did you, of your brother Ed's?
A. I wrote to her when I got this letter, and in about a week I got the letter.
Q. Had you written Ed about the matter and told him to write her?
A. Yes sir.
Q. Where was he then?
A. He was here.
Q. Here in Aurora?
A. Yes sir.
Q. And that was before this suit was commenced to reopen this case?
A. Yes sir.
Q. By this I mean before you filed this motion to reopen the judgment in 1902?
A. That was after we filed it.
Q. That you wrote to your sister?
A. I was trying to hunt up some evidence, I was trying to find some of the correspondence Judge told me I should hunt up my correspondence.

323 Q. You then at that time had a conversation with your brother Ed here in Eurora?
A. Yes sir, he was here.
Q. He was here when you decided to institute this action for partition?
A. I don't remember whether he was or not.
Q. He was also with you when you consulted your attorneys about this matter, was he not?
A. Well, I don't remember whether he was or not.
Q. And later then in the fall you saw him again did you not, in the fall of 1902?
A. I think I did.
Q. And you talked this matter over at that time did you?
A. Well I couldn't say I presume we did.
Q. Do you know where he is now?
A. No sir, I do not.
Q. Have you had any correspondence with him lately?
A. I had a letter from him and a card about his business last January.
Q. And did you respond to him?
A. Yes sir.
Q. And have you had any letter from him since that time?
A. No sir, I have not.
Q. You say you were in Nebraska in 1897?
A. No sir, I wasn't.
Q. Were you here in 1894?
A. No sir.
Q. Were you here in 1895?
A. Well I am not positive, I might have been here in 1895.
324 Q. Were you here in 1896?
A. No sir.
Q. Nor in 1897?
A. No sir.
Q. In 1898?
A. Yes sir.
Q. What time in 1898?
A. Why, I think sometime in February.
Q. But you visited the west, you passed through Nebraska, in 1897?
A. No sir, I did not.
Q. Didn't you go west in 1897?
A. Yes sir, but I went straight west. I wasn't in Nebraska, after I received my deed in 1896 until I came here in 1898. That is the first time I had been here since I received my deed, and when I got here the deed was set aside.
Q. That was in 1898?
A. That was in 1898.
Q. You passed through Nebraska in 1897.
A. Part of the way I suppose, my train went through, but I didn't stop.
Q. Went to Holyoke Colorado?

A. Yes sir.
Q. Visited there with your sister?
A. Yes sir.
Q. And corresponded with your brother W. H. Fall more or less?
A. I did not.
Q. Did you ever receive a letter from your brother W. H. Fall in the year 1897?
A. Well, I don't think he averaged writing me letters once in five years, his family generally wrote them.
325 Q. Well did you receive any from the family in 1897?

Mr. HAINER: That is objected to as irrelevant and immaterial and not relating to any of the issues in this case, and not cross examination.
Objection overruled.
Exception.

A. I received one from his daughter, that he was very sick.
Q. Have you that letter?
A. I think it was 1897, I couldn't be positive.
Q. Have you that letter?
A. No sir.
Q. Have you any correspondence between yourself and your brother W. H. Fall?
A. No sir, If I was to burden myself with letters I would have barrels of them.
Q. Have you any further letters between yourself and your brother E. W. Fall?
A. No sir.
Q. You destroyed all of those did you?
A. I suppose I destroyed those, when I destroyed everything when I sold out to move to Nebraska.
Q. You hadn't sold out when you instituted this partition suit had you?
A. Yes sir.
Q. In July 1902
A. July 1902, I had sold out my possessions in Charleston.
Q. And you burned your letters at that time?
A. Yes sir, I cleared out my rubbish, and couldn't carry them, and never thought those letters would be of any possible good to me and I burned them with some other letters that would
326 have been good for my business in other matters. But I had my deed and I thought that was enough.
Q. Who was looking after your affairs here in Nebraska?
A. Wasn't anyone looking after my affairs.
Q. Didn't have anyone looking after them at all?
A. No sir.
Q. Now, how often did you hear from your brother E. W. Fall while he lived in Seattle?
A. Not very often. I couldn't tell, I wrote him several letters that I never got any answer to in regard to interest on my money.
Q. And did you get no response from him at all concerning any of this matter?

A. Not until he wrote me that letter?
Q. Wrote you what letter?
A. The one——
A. The one that this is a reply to?
A. Yes sir.
Q. And you state positively that you got a letter at that time?
A. Yes sir, I got a letter saying what he thought of doing to secure me, that he had been quite sick and his nurses cost him $300.00 and he was very close to death for three or four days.
Q. Did you not state on the 30th of January 1903, in response to this question "Did you talk to your brother in 1898, to William H. Fall,"? and you answered "Yes sir, that was the first time I knew there had been any suit". And this question was asked you "He explained the matter to you then"? and you answered "Yes sir he explained the matter to me then, and I was perfectly dumfounded" And this question was then asked you "Had you talked or corresponded with your brother E. W. Fall, at this time?"
327 and you answered "No sir, I did not hear from him for five years, I had one or two letters before that, but I did not hear from him in five years". Did you make that answer?
A. I didn't hear from him for five years after I received my deed?
Q. Do you now state that you had not heard from him for over five years in 1898?
A. I hadn't heard from him for five years after I received my deed.
Q. Did you not get the deed from E. W. Fall?
A. No, he wrote me that he had sent it to William H. Fall, and requested him to record it, and he would send it to me, and he says if he didn't do it, you write to him immediately.
Q. You got it from W. H. Fall did you?
A. I received it from W. H. Fall
Q. Was there any letter with that deed?
A. He wrote me a short postscript that I should get somebody to attend to my business.
Q. Have you got that postscript from your brother W. H. Fall?
A. Just three or four lines in it.
Q. Have you got that letter?
A. No sir.
Q. Do you know where it is?
A. No sir, it is burned up with the rest of them I suppose.

Mr. MATTERS: That is all.

328 Redirect examination.

By Mr. HAINER:

Q. Were you ever sworn as a witness until you were sworn when you gave your depositions here in this building?

Mr. MATTERS: That is objected to as incompetent and immaterial.
Objection overruled.
Exception.
A. No sir, I never was.

Q. Have you ever been a witness in any case other than this case?
A. No sir, I never testified for anything, nor anybody in my life before.
Q. Now Mrs. Eastin, after Mr. William H. Fall told you, or when Mr. William H. Fall told you of the proceedings had in this court, did you then know what your legal rights were in this matter?

Mr. MATTERS: That is objected to as incompetent and immaterial.
Objection overruled.
Exception.

A. No sir, I did not.
Q. Now, Mrs. Eastin is it your understanding that your brother Ed Fall has any interest in this land in controversy

Mr. MATTERS: That is objected to as incompetent irrelevant and immaterial and leading.
Objection sustained.
Exception.

Q. Is there any arrangement or agreement between you and your brother Ed, by which he is to have any interest in this land, which has been deeded to you, or any benefit from it, in any way?

Mr. MATTERS: That is objected to as leading incompetent, irrelevant and immaterial.

329 Q. Is there any agreement or understanding or agreement between you and your brother Ed by which you are to convey back any interest in this land?

Mr. MATTERS: That is objected to as leading and incompetent.

Q. What arrangement or agreement or understanding if any has been made between you and your brother touching any reconveyance of this property?
A. None at all.
Q. What interest do you claim if any in the note which you sent to your brother William H.?

Mr. MATTERS: That is objected to as incompetent.
Objection sustained.
Exception.

Q. What dominion or control if any, have you exercised over the $1,000.00 note which your brother gave you, and concerning which you have testified since the surrender of the same to William H. Fall as you have testified?

Mr. MATTERS: That is objected to as incompetent and immaterial.
Objection sustained.
Exception.

Mr. HAINER: That is all.

Recross-examination.

By Mr. MATTERS:

Q. Mrs. Eastin, if your brother, E. W. Fall should return you the amount of your note and interest you wouldn't care for this land would you, you would direct it deeded to him?

Mr. SMITH: That is objected to as incompetent irrelevant and immaterial and not proper cross-examination.

Objection sustained.

Exception.

330–370 Q. In case that this note and interest was paid you would reconvey this land to your brother, would you not, or anyone he would direct?

Mr. MATTERS: That is objected to as incompetent irrelevant and immaterial and not proper cross examination.

Objection sustained.

Exception.

Mr. MATTERS: That is all.

Witness excused.

* * * * * * *

371 Mrs. SARAH S. FALL, having been heretofore sworn, now re-called and testifies as follows:

Direct examination.

Mr. MATTERS:

Q. You may examine the paper which is marked for identification Exhibit "I" and state if you have ever seen that paper before?

A. Yes sir.

Q. Where did you receive it?

A. I received it in Seattle, through the ordinary mail.

Q. Do you know the handwriting?

A. Yes sir.

Q. Whose handwriting is that?

A. Ed H. Eastin's.

Q. The husband of Mrs. Eastin, the defendant in this suit?

A. Yes sir.

Mr. MATTERS: We now offer this letter in evidence.

Mr. HAINER: That is objected to as incompetent, irrelevant and immaterial and for the further reason that on the 30th day of January 1903, notice was duly served upon the plaintiff for the inspection of all letters and papers pertaining to this case which the plaintiff desired or intended to use as evidence herein, and which notice was not complied with, and thereafter an order was duly made by this court requiring plaintiff to produce for inspection all letters and papers pertaining to this case which she desired to use as evidence;

and which order was not complied with, as more fully ap-
372 pears from the notice which is on file in this case, and the order of this court.

Objection sustained.

Exception.

Exhibit I offered and rejected follows.

Ex. I. 12, 1903. O. P. H.

Office of W. R. Highland, County Clerk of Coles County.

Charleston, Ill., *Oct.* 16, 1884.

Dear Sister Sadie & Bro. Ed.:

Enclosed find Power of Atty. to redeem lot, sell or trade.

Will go to Mattoon tomorrow and investigate as to value location &c. We often talk of our nice and agreeable visit with you and we feel very kindly about our trip to Nebraska with all our brothers & sisters, which was and is remembered as one of the bright places in life's history.) Will say that we have rather good prospects to regain our lots here. These lots are rather better than any lots I know of, in this pleasant little town.

As to your lot the amount requisite to redeem is about Thirty-one Dollars $31.00 which — course I will attend to, in case the lot is of sufficient value.

My regards and love to both of you and hope you may be as happy in future as in the past.

You are very handsomely situated.

Love to both

Your Friend, E. H. EASTIN.

373 Ex. I. O. P. H.

Headquarters of Democratic County Central Committee, Charleston, Ill.

Charleston Jun- 4 1884 Ill.

United States Postage. 2 Two Cents

Dr. Edward W. Fall,
[Aurora]* *Nebraska City,*
[Hamilton Co.]* *Nebraska.*

Nebraska City Nebr. Jun- 5 1884 Recd.

[*Words in brackets erased in copy.]

374 Q. You may examine Exhibit "J" and state if you ever saw that paper before?

A. Yes sir, I have.

Q. Where did you receive that?

A. Through the ordinary mail.

Q. And do you know the handwriting of this letter?

A. Yes sir.

Q. Whose handwriting is it?

A. Mrs. Lizzie Eastin's.

Q. And did you receive it at the time it purports to have been received at Seattle, Washington?

A. Yes sir.

Q. And the Dr. E. W. Fall to whom it was addressed, that is your former husband?

A. Yes sir.

Mr. MATTERS: We now offer in evidence Exhibit J.

Mr. HAINER:

Q. Is this one of the letters which you had in your possession and which was referred to by your counsel in taking the deposition of Mrs. Eastin before Mr. Corcoran the court reporter, last January?

A. Yes sir, it was the same letter.

Mr. HAINER: We object to the introduction of this in evidence, for the reason that it is incompetent, irrelevant and immaterial, not rebuttal evidence, and for the further reason that due notice has been given to the plaintiff to produce this letter for inspection and permission for the defendant to take a copy of the same, and an order has been duly made by this court requiring the plaintiff to comply with this request and the plaintiff has failed and refused so to

375 do, and therefore this letter should now be Excluded, and for the further reason that the letter in question does not purport to be a complete letter, a portion thereof having been evidently torn off, and no explanation given of that fact.

Objection overruled.

Exception.

Exhibit J Received and read in evidence as follows:

CHARLESTON, ILL.,
SUNDAY, *Nov.* 8", 1884.

MY DEAR BROTHER ED.: I recd a letter from brother Will this morning enclosing a copy of a letter from Dr. Henry, and to say I am surprised at the statement in his letter, first I will say it is alye from beginning to end and a person that will wilfully make such statement can't be trusted and I gave the letter to father to read, he said he only told him that my brothers did own a lot in Matoon that had been reemed from taxes and that I could tell him all about it if he would call down at the house so he did, and his brother in law Briggs who is a neighbor call with him and he said he caled in regard to a lot my Brother owned in matton that he could find no lot which you had described, he said the Dr. wanted him to sell it for

him and told him that Ed. E had the power of attorney & papers and that he wanted them to sell it for you, I suppose he thought you would have to but I told him you had paid Mr. Eastin for the redemption of the lot & that I had sent them all to you, and he seemed very much surprised and flustrated over it. I also told him that I had just rec'd a letter from you and you wanted me to buy the lot but I told him that I could not buy the lot now, but to write to me what the cash value of the lot was. when he had seen it, this is true and he is an old friend, and he never wrote me a word. I never hinted at you making me a pressent of the lot at all, neither did I tell him what you asked or what you would take nor he did not ask me.

So he is a notorious old lyar and onely wants to get hold of your lot and if you have given him any power withdraw it at once. Father says if he owned a lot in Mattoon that if he sold it on a credit to Dr. Henry he was shure he would never get anything for it, I tell you I would trust no one who would tell sutch lyes to say you were cheated out of your lot he is an old lyar and the truth hant in him when I told him you had the papers all, dont he know he could see he was lyeing if he hasn't gone crazy he had had a bad spell of grip "& I said the Dr. wrote me he had not heard from Dr. Henry since he went home that was about the middle of June, he held up his hand said he was to shaky to write that he came near dying with grip maby his mind got shattered with his nurves, I dont know I did not hear from Dr. Henry but supposed you had as I told him if he could get up a sale you could send the papers back.

and I knew you wanted the lot sold, so I went to two real estate men in Charleston before I left home, Harry Jeffers, the man Ed bought the redemption deed from knew he knew al about it. and another one Mr. Took and told them if they could get two hundred for it to let me know.

376 and at the end of two months they had not an offer as good as that, and I am like you to much property an no money was no way to make any Now in regard to my bill Brother Will wrote me that you said you had sent me 25 dollars from Ellens Burg & he sent me 50 dollars that is true I told him all about it while there I told him that paid Eds bill for the redemption of Mattoon lot, which was over 50 dollars cash down about 7 years ago or there abouts and that interest on money and taxes had all amounted to about 80 dollars but I was fully satisfied with what I had got and that was the reason I sent you your papers so that you would not miss the sale with your mattoon friend and was surprised to see it was our old Dr. Henry who used to live over on the hill from Eds fathers when we were married I told Will also and he could see by the new note that the first day of March it was $216 and I beleive sixty cts. Its now been over 7 even months since the first of Nov and I told you in my letter I must have interest while I paid interest Since poor Eds death I have paid 35 dollars in the building and loan and 5 dollars interest to another party that we owed at Eds death and the funeral Ex Dr. Bills, with many minor bills has kept me scraped, Hat paid my way to Ind and fixed me up for my

western trip & Will paid my way out west and Cliff paid it back and what I needed was given to me in the rounds and my health was so bad was the reason I did not write in regard to the maattoon lot and I thought if I did not get well I wanted to give you your old note as a present, as I do expect to leave all I have to my own brothers and sisters and I did feel so sorry for you in your stratened circumstances and never pushed on note and borrowed money to help you to use mine as long as I could and I tried to be so good and kind to you and Sadie both about it it looks like my bills are so many that my rents is only a drop in the bucket ever since Ed died I have cramped myself for room to rent out to pay Bills to try to save what I have so as to have an income of a little rent to live on when I get old. I never spent a dollar for mourning cloths just wore my old ones I need now warm winter clothes and shoes, I haven't had a pair of gloves on since Ed died and it looks rather cool for mits now and don't go to church on account of it I will go without before I will ask credit I need my cloak fixed for winter and Hat wrote me if I would come up on half fare thanksgiving she would pay my way and I had made up my mind to go and get it fixed if I could possibly spare the money after you paid me of course I have property like you going down on my hands I can see lots of dammage the little time I was gone, and dont like to live in house with renters

you can see by your deeds and papers your lot is allright the last receipt I have I paid 2 dollars this year I wrote you that it was advertised for sale and I went and borrowed the money as sale commenced that afternoon See what a Good sister I was that no cost should be put on it again and have given you credit on the back of old note for the $50 & 65 dollars as you will see. I do hope this will all be satisfactory to you as it pains me very much to think you would mistrust your dear old sister for a moment, I feel in my own eyes that my word is as good as the gold and so hope to live and I have write the trouth the whole trouth and give a true statement to you and also to Will so help me God, if I was put upon oath and hoping this is over.

satisfactory to you boath with no hard feelings toward none as I have had so much bitter in my life in the last years I feel I could not bear one of my brothers or sisters feel ill towards me, had a letter from Maggie today Charlie is elected again she says if I come and spend the winter her she would pay my way, cant go

Yours loving sister LIZZIE.

377 Ex. J. O. P. H.

T 3
G. F. C.

Charleston
Nov.
4
1891
Ill.

United States
Postage
2 2
Two Cents.

Dr. E. W. Fall,
Seattle,
Washington Ter.

23 Roxwell.

Seattle Washington
Nov.
13
10 P. M.
1891
Rec'd.

378 Q. Mrs. Fall, do you know what indebtedness if any your husband owed to your sister in 1891?

A. Yes sir.

Q. What was it?

A. It was a note for $200.00.

Q. What amount did he pay on it at that time?

A. Well I remember of him paying $65.00 once, and $50.00 another time and I think $50.00 two different times, and then in this letter she wanted money and Ed didn't have it with him and he wrote to his brother Will who had our rents in his hands and borrowed $50.00 and sent it on to Lizzie Eastin.

Mr. Smith: I desire to ask a question.

A. I did nearly all of my husband's writing.

Mr. Smith: I ask leave to ask a question.

Mr. Matters:) Is that the $50.00 referred to in Mrs. Eastins letter that Will Fall sent on for your husband?

A. Yes sir.

Q. Where she says she received $50.00 from Will, is that the $50.00 you have reference to?

A. Yes sir.

Q. Now did you receive any receipt from Will for that money?

A. No sir, not until I asked for it in 1893.

Q. You may examine this paper marked for identification Exhibit "K" and state if you have ever seen that before?

A. Yes sir.

Q. Where did you first see it?

A. At my brothers.

Q. In Aurora, Nebraska?

379 A. Yes sir. He handed it to me.

Q. Do you know who signed it?

A. Yes sir.

Q. Did you see it signed?

A. Yes sir.
Q. Who signed it?
A. W. H. Fall.
Q. Brother of Mrs. Eastin?
A. Yes sir.
Q. And this $50.00 referred to in this document is the $50.00 that you say he sent to his sister?

Mr. SMITH: That is objected to as not the best evidence.
Objection overruled.
Exception.

A. Yes sir.

Mr. MATTERS: We now offer in evidence Exhibit "K"
Mr. HAINER: That is objected to as incompetent irrelevant and immaterial and the receipt offered in evidence shows on its face that it relates to a transaction between E. V. Fall and W. H. Fall and does not relate to any transaction to which Mrs. Eastin was a party.
Objection overruled.
Exception.

Exhibit "K" received and read in evidence.

Ex. K. O. P. H.

Date..... $..... OCT. 30TH, 1893.
From.....
.....
For..... .....
.....
$.....

Received from E. W. Fall, payment in full for two promissory notes, one for $50.00 and one for $100.00 notes misplaced date of notes prior to this.

W. H. FALL.

380 Q. You may examine this paper marked for identification Exhibit "L" and state if you have ever seen that before?
A. Yes sir.
Q. Where did you first see it?
A. In Seattle.
Q. How did you receive it?
A. Through the mail.
Q. And this is the envelope in which it came (handing witness an envelope)?
A. Yes sir.
Q. This writing with a pencil wasn't on it when you received it.
A. No sir.

Mr. MATTERS: We offer in evidence Exhibit "L."
Mr. HAINER: That is objected to as incompetent irrelevant and immaterial and the letter on its face shows that it relates to a transaction between William H. Fall and E. W. Fall and antedating by nearly two years the transaction which is here the subject of inquiry.
Objection sustained.
Exception.
"Exhibit L offered and rejected may be found upon the following page.

Ex. L. O. P. H.

If not called for in ten days return to W. H. Fall Sheriff of Hamilton County Aurora, Nebr.

Aurora Oct. 23 1891 Neb.

2 c. stamp.

About notes.†
Lizzie & Will's letters.†
(Ed's letter to Pa.)†

Dr. E. W. Fall,
Rooms 22 and 23
Boswell Building,
Seattle, Wash.

Seattle Oct. 26 9:30 P. M. 1891 Rec'd.

381 Office of W. H. Fall, Sheriff Hamilton Co.

Officers of court:
Edward Bates, Judge.
T. E. Hamilton, Reporter.
W. H. Fall, Sheriff.
W. L. Stark, County Judge.

AURORA, NEB., *Oct.* 23, 1891.

Bro Ed., Seattle, Wash.:

Yours with deed enclosed reed I sent a receipt to sister Lizzie to sign and as soon as she returns it I will send you notes and receipt also your notes to me I have marked them all paid and got them filed away in safe I am not feeling well but am able to attend the office work I do hope you are making money and doing well and above all enjoying good health I never knew what good health was until the last few months Cliff is doing well making from $300 to $500 per month things are dull here there is no one in the house I am going to nale boards over the windows there was four lights knocked out last week I think there 40 empty houses in this town you cant rent out that far Write and give me all the news.

Yours Bro WM. H. FALL.

382 Q. Where were you in the summer and fall of 1893?

A. Well up to August the 9th I was in Seattle. On August the 9th we took the train for Chicago.

Q. Who took the train.

A. Dr. E. W. Fall, Mrs. Wiley and myself. We went to Chicago and stayed about ten days.

Q. How long did Mr. Fall remain there?

[†In pencil in copy.]

A. At that time he remained all the time I was there, we were both there about ten days and then we left Chicago and both went to Thorntown, Indiana and he was there two or three days and then went to Indianapolis and made a very short stay there and went back to Chicago, and he stayed at that time about a week and then he left Chicago and came to Aurora.

Q. How long were you at Thorntown?

A. Well he was there only just two or three days and then he left and went to Indianapolis, and then from Indianapolis he went back to Chicago. He took a northerly route from Indianapolis, because he told us about his trip on the water and I think he was in Chicago for about a week then, and then he came on to Aurora.

Q. How long did he say he remained in Aurora.

A. Well I have a letter. I can testify from that letter.

Q. Who was that letter signed by?

A. Written by Mr. Wiley to Mrs. Wiley reciting the time he reached Seattle.

Q. How long before you came to Aurora?

A. Well, I left Chicago for Aurora,—Well I stopped in Iowa, about two days. I remember the 9th it was, Chicago Day, that I left in the morning.

383 Q. When did you arrive here?

A. Well not later than about the 15th of October.

Q. And did you visit with W. H. Fall and his people?

A. Yes sir.

Q. Was there anything said about Mrs. Eastin's visit at that time?

A. No sir.

Q. Nothing said that she had been here at all.

A. No sir.

Q. When next did you see your husband?

A. Not until my return to Seattle.

COURT: When was that:

A. When I returned to Seattle?

COURT: Yes.

A. Early in November. I left here I think the first of November on account of our tickets.

Q. You then met him in Seattle at that time?

A. Yes sir.

Q. Was there anything said about any money having been received from Mrs. Eastin?

Mr. SMITH: That is objected to as incompetent irrelevant and immaterial and hearsay.

Objection overruled.

Exception.

A. No sir, not a word. He didn't tell me anything about getting any money and I know he didn't.

Mr. SMITH: We move to strike out the last part of the answer as merely an opinion of the witness.

Motion sustained.

Exception.

Q. Tell the court the circumstances in which you lived after your return.

384 Mr. SMITH: That is objected to as not rebuttal incompetent, irrelevant and immaterial.
Objection overruled.
Exception.

A. You mean how we lived?
Q. Yes. Did you have plenty of money, after you got back to your husband?

Mr. SMITH: That is objected to as leading suggestive and improper cross examination and not rebuttal.
Objection overruled.
Exception.

A. No, we didn't have any more money than we did before.
Q. Did your husband make any investments there after his return from Nebraska?

Mr. SMITH: That is objected to as leading suggestive, improper cross examination and not rebuttal.
Objection overruled.
Exception.

A. No sir, not any.
Q. Did he purchase an additional library?

Mr. SMITH: That is objected to as leading suggestive, improper cross examination and not rebuttal.
Objection overruled.
Exception.

A. No sir, he did not.
Q. Did he purchase any medical instruments of any kind?

Mr. SMITH: That is objected to as leading, suggestive improper cross examination and not rebuttal.
Objection overruled.
Exception.

A. No sir.
385 Q. Was there any indication in any way given you by your husband either by his conduct or his conversation, or by the purchase of property or otherwise, that he had received any money from Mrs. Eastin as indicated by her?

Mr. SMITH: This is objected to as incompetent irrelevant and immaterial, calling for hearsay testimony, not proper rebuttal testimony and asking for a conclusion of the witness.
Objection overruled.
Exception.

A. No sir, not any.
Q. Now you and your husband were on good terms at that time were you not?
A. Yes sir.
Q. There was no disagreement between you?

A. No sir, not until a letter that W. H. Fall sent to him.
Q. After your return.
A. Yes sir.
Q. Were you on such friendly terms and relations that had he received any money from his sister that he would have stated so to you, state whether or not that is true.

Mr. SMITH: That is objected to as incompetent irrelevant and immaterial, calling for a conclusion of the witness, leading and not rebuttal.
Objection overruled.
Exception.

A. Yes sir, that is true, we always consulted together he always consulted with me about everything in a financial line up to this time, and he prospered to then.
Q. Now you may state whether or not your husband was indebted to anyone in Seattle at that time, that he could have used this
386 money in paying bills.

Mr. SMITH: That is objected to as incompetent irrelevant and immaterial and no foundation laid and not rebuttal.
Objection overruled. Exception.

A. I saw a book account of $100 that he owed to Mr. Wiley.
Q. Did he pay that?
A. No sir, it was still left unpaid, and he had a suit against him for damages that came up in the Court, September the 22nd I think.

(COURT:)

Q. Of what year?
A. 1893, that is the reason he had to leave Chicago before I did, and the attorney that was called in to assist Mr. Wiley in the suit wasn't paid. He had not been paid up to Mr. Wiley's death.
Q. He won that suit?
A. Yes sir.
Q. That is your husband was successful in that litigation?

Mr. HAINER: That is objected to as incompetent, irrelevant and immaterial.
Objection overruled.
Exception.

A. Yes sir.
Q. Now who was Mr. Wiley?
A. My sister's husband.
Q. Can you state to the court how you lived?
A. We all lived together as one family.
Q. Mr. Fall and yourself, and Mr. Wiley and Mrs. Wiley.
A. Yes sir, all the time we lived in Seattle we lived so.

Mr. MATTERS: That is all.

387 Cross-examination.

By Mr. HAINER:

Q. In the fall of 1893 you made but one visit to Aurora, did you?
A. Yes sir, I only made one.
Q. You stated that you visited Mr. William H. Fall at that time?
A. Yes sir.
Q. How long were you there?
A. Well I was there the most of one afternoon, and for supper, and along in the evening.
Q. That was the extent of your being there?
A. Well that was the longest visit I made. I was there and made short visits, that is just calls. In our former home.
Q. Simply party calls?
A. Yes sir short calls, and I visited other relatives to-.
Q. Were you the remainder of the time with other relatives?
A. Yes sir, I was right here in Aurora.
Q. You had a brother living here.
A. Yes sir, and two sisters.
Q. And you visited them?
A. Yes sir, I made my home with them.
Q. You say you were here about two weeks?
A. Yes sir, I also visited all of the Fall family here.

Mr. HAINER: That is all.

Witness excused.

388 Mr. MATTERS: We now offer in evidence questions 35 to 50 and the answers thereto of the deposition of Mrs. Eastin, taken on the 30th of January 1903, before Fred Jeffers, Clerk of the District Court in the City of Aurora, Nebraska, in the case of Sarah S. Fall *vs.* Edwin W. Fall, Elizabeth Eastin *et al.*

Mr. HAINER: That is objected to as incompetent irrelevant and immaterial, not rebuttal evidence and we also object to the introduction of a detached portion of the deposition taken in this case.

Objection overruled. Exception.

Questions and answers offered received and read in evidence, see pages — —.

Mr. MATTERS: We offer in evidence questions 123 to 125 both inclusive and the answers thereto of the deposition of Elizabeth Eastin, taken January 30th 1903, before Fred Jeffers, District Court Clerk.

Mr. HAINER: That is objected to as incompetent, irrelevant and immaterial, not rebuttal evidence, and because it is improper to detach part only of a deposition when the deposition on its face shows that the subject of inquiry is treated in other questions and answers, besides those sought to be introduced in evidence, and is a mere attempt to garble the testimony of the witness.

Objection overruled. Exception.

Questions and answers offered, received and read.

See pages — — hereof.

389 Mr. MATTERS: I now offer in evidence, questions 171 to 189 both inclusive and the answers thereto of said deposition.

Mr. HAINER: That is objected to for the reason it is incompetent, irrelevant and immaterial and not rebuttal testimony, and it is improper for the plaintiff to introduce detached portions of the deposition taken by her on her own behalf without introducing the whole thereof.

Objection overruled. Exception.

Questions and answers offered received and read in evidence, see pages — — hereof.

Mr. MATTERS: We now offer in evidence questions 102 to 116 inclusive and the answers thereto, and questions 348 and 349 and the answers thereto, of said deposition.

Mr. HAINER: The defendants object to the introduction of this evidence for the reason that it is incompetent irrelevant and immaterial, not proper rebuttal evidence and it is detached portion only of the deposition taken by the plaintiff in her own behalf.

Objection overruled. Exception.

Questions and answers offered received and read in evidence, see pages — —.

390 Mr. MATTERS: We now offer in evidence Exhibit "F" with leave to supply certified copy, being a Bill of Sale.

Mr. SMITH: That is objected to as incompetent irrelevant and immaterial, not proper rebuttal testimony.

Objection overruled. Exception.

Exhibit "F" received and read in evidence as follows.

391–451 Mr. MATTERS: We offer in evidence questions and answers thereto numbered from 8 to 22 inclusive.

Mr. SMITH: That is objected to as incompetent, irrelevant and immaterial, not proper rebuttal evidence, and it is detached portion only of the deposition taken by the plaintiff in her own behalf.

Objection overruled. Exception.

Questions and answers offered received and read in evidence,—see pages — —.

Mr. MATTERS: We now offer in evidence question 214 and the answer thereto of said deposition.

Mr. SMITH: That is objected to as incompetent, irrelevant and immaterial, not proper rebuttal and it is a detached portion only of the deposition taken by the plaintiff in her own behalf.

Objection overruled. Exception.

Question and answer offered received and read in evidence, see page — hereof.

Mr. MATTERS: Also questions 257 to 263 both inclusive and the answers thereto of said deposition.

Mr. SMITH: That is objected to as incompetent irrelevant and immaterial, not proper rebuttal and it is a detached portion only, of the deposition taken by the plaintiff in her own behalf.

Objection overruled. Exception.

Questions offered received and read in evidence see page —.

* * * * * * *

452 And afterwards on the same day, towit, April 4, 1905, there was filed in the office of the Clerk of said Supreme Court a certain Supplemental Transcript in the words and figures following, towit:

453 STATE OF NEBRASKA,
Hamilton County, ss:

Pleas before the District Court of said County of Hamilton, at a term begun and holden in said county, on the 30th day of September, A. D. 1897, before Hon. S. H. Sedgwick, judge of said court.

SARAH S. FALL, Plaintiff,
vs.
EDMOND W. FALL, WILLIAM H. FALL, ELIZABETH EASTON, Defendants.

That as an amendment and additional transcript in the above named cause, be it remembered that heretofore, towit:

On the 31st day of March A. D. 1897, an affidavit was filed in the office of the Clerk of the District Court of said Hamilton County, in the words and figures following towit:

In the District Court of Hamilton, County, Nebraska.

SARAH S. FALL, Plaintiff,
vs.
EDMUND WEBSTER FALL, WILLIAM H. FALL, and ELIZABETH EASTON, Defendants.

STATE OF NEBRASKA,
Hamilton County:

A. W. Agee being first duly sworn says he is one of the attorneys of the plaintiff in the above entitled cause; that the above named plaintiff has filed her petition in the above entitled cause and court against all of the above named defendants, alleging that on the 5th day of October A. D. 1895 the said plaintiff duly obtained a judgment by the consideration of the Superior Court of King County, in the State of Washington, said court being a court of Gen-
454 eral jurisdiction, against the defendant Edmund W. Fall, dissolving the bonds of matrimony theretofore existing between said plaintiff and said last named defendant and awarding and setting apart to said plaintiff in fee simple as her separate property the South-west quarter of Section Twelve, in Township Eleven, north, Range, Seven, west, in Hamilton County, Nebraska, and directing said defendant to convey all his right, title and interest in said premises to said plaintiff within five days from date.

That said judgment and decree was on the 15th day of May 1896, in all things affirmed by the Supreme Court of said State of Washington and on the third day of July 1896, said defendant having failed

to convey his title and interest in said premises to the plaintiff, W. T. Scott, of said King County, Washington, was duly appointed by said Superior Court, a commissioner to make, and deliver to said plaintiff a deed in accordance with the decree of said court, and that on the third day of July 1896, said Scott duly conveyed to the plaintiff the said premises in accordance with said decree and the order of said court and the deed therefor was duly approved by said court:

That said action is brought to obtain a decree giving full faith and credit to the said judgment and decree of said Superior Court of King County Washington; to have declared fraudulent, null and void a certain mortgage made and delivered by said Edmund Webster Fall to the said William H. Fall on said land after said decree was entered and which mortgage is recorded in Book R, of the mortgage records of Hamilton County, Nebraska, at page 412, and casts a cloud on plaintiff's title to said land; and also to have declared fraudulent, null and void a certain deed made and delivered on the 7th day of April 1896, by said Edmund Webster Fall to his said sister Elizabeth Easton whereby he pretended to convey said land to her, and which deed is recorded in book R, of the deed records of said Hamilton County at page 555, and constitutes a cloud on plaintiff's title to said land, and praying that plaintiff's title to said land may be confirmed and quieted and that each of said defendants be adjudged to have no right title or interest in said land either at law or in equity, and for such other relief as may be equitable.

455 Affiant says that said Edmund Webster Fall and Elizabeth Easton are and each of them is a non-resident of the State of Nebraska, and that service of summons cannot be made upon them or either of them in the state of Nebraska and that plaintiff therefore desires to procure service by publication.

A. W. AGEE.

Subscribed in my presence and sworn to before me this 31st day of March 1897.

[SEAL.] J. B. CUNNINGHAM,
Clerk of Dist. Court.

And afterwards on the 11th day of May, 1897, there was filed in the office of said clerk an affidavit of proof of publication in the words and figures following, towit:

Proof of Publication.

STATE OF NEBRASKA,
Hamilton County, ss:

I, J. C. Work being first duly sworn, depose and say that I am one of the publishers of The Aurora Republican, a weekly newspaper, printed, published and of general circulation in Hamilton County, Nebraska; that said newspaper is printed in whole or in part at the

place of publication: that said new-paper is a legal newspaper within the meaning of the law, having a *bona fide* circulation of more than 200 copies weekly, and having been published within Hamilton County for more than 52 weeks successively prior to the first date of the publication of the annexed notice: that the annexed notice, entitled Notice to Non-residents was published in said newspaper for five consecutive weeks, beginning on the 2nd day of Apr. 1897 and ending on the 23 day of Apr. 1897.

J. C. WORK.

Subscribed and sworn to before me this 3" day of May 1897.

W. E. MOORE,
Notary Public.

My commission expires Jan'y 14, 1902.

Publisher's fee $12.50.

Filed May 11th 1897.

456 [SEAL.] J. B. CUNNINGHAM,
Clerk District Court.

Notice to Non-residents.

Edmund Webster Fall and Elizabeth Eastman will take notice that on the 26th day of March 1897, Sarah S. Fall filed her petition in the district court of Hamilton County, Nebraska, against the said Edmund Webster Fall, William H. Fall and Elizabeth Eastman, defendants, the object and prayer of said petition being to attain a decree and judgment of said court giving full faith and credit to a certain judgment of the Superior Court of King County in the State of Washington entered on the 5th day of October, 1895, in the action wherein said Edmund Webster Fall was plaintiff and said Sarah S. Fall was defendant, granting to said Sarah S. Fall a decree of divorce from said Edmund Webster Fall and making a disposition of the property belonging to said parties and settling the property rights between them and awarding to said Sarah S. Fall, in fee simple to be held and owned as her separate property, the south-west quarter of section twelve (12) in township eleven (11) north, range seven (7) west, in Hamilton County Nebraska, and also to obtain a judgment and decree setting aside and annulling a certain mortgage deed from said Edmund Webster Fall to his brother and co-defendant William H. Fall, on the land above described which said mortgage deed is recorded in book "R" of the mortgage records of said county of Hamilton, at page 412, and also setting aside and annulling a certain deed from said Edmund Webster Fall to his sister and co-defendant Elizabeth Eastman, covering said land, which deed bears date April 7, 1896, and is recorded in book "R" of the deed records of said Hamilton County at page 555, and to remove the cloud cast upon the title of the plaintiff to said land by said mortgage and said deed and to quiet the title of the plaintiff to said land and for general relief.

You are required to appear and answer said petition on or before the 10th day of May 1897, or said petition will be taken as true and judgment rendered accordingly.

Dated April 1st, 1897.

SARAH S. FALL, *Plaintiff.*
By JOHN WILEY AND
A. W. AGEE,
Her Attorneys.

457 And afterwards towit, on the 30th day of September, 1897, final judgment was rendered in said cause which appears of record in court journal 6 page 512 of the records of said clerk's office and is in the words and figures following, towit:

In the District Court of Hamilton County, Nebraska.

SARAH S. FALL, Plaintiff,
vs.
EDMUND WEBSTER FALL, WILLIAM H. FALL, and ELIZABETH EASTON, Defendants.

Now, towit, on this, the 30th day of September A. D. 1897, this cause having heretofore been submitted and taken under advisement by the court came on for final determination, and the court being fully advised in the premises, finds by the answer of the defendant William H. Fall that he claims no interest in, or lien upon the real estate described in plaintiff's petition and that he in fact has no interest therein. The court further finds all the allegations of plaintiff's petition to be true and that neither of the defendants Edmund Webster Fall and Elizabeth Easton has any interest in or lien upon the premises in said petition described, towit, The southwest quarter of Section Twelve (12) in Township (11) North, Range Seven (7) west of the sixth principal meridian in Hamilton County, Nebraska. That the plaintiff is the sole owner in fee simple, of said premises and that full faith and credit should be given to the judgment of the Superior Court of King County, in the State of Washington as set forth in said petition.

It is therefore considered, adjudged and decreed that full faith and credit be given to the judgment of the Superior Court of King County in the State of Washington, in the case mentioned and described in said petition. That the plaintiff Sarah F. Fall is the owner in fee simple title, of the Southwest quarter of said Section twelve (12) in Township Eleven (11) North, Range Seven (7) west of the Sixth principal meridian in Hamilton County, Nebraska, and that her title thereto be, and the same is hereby quieted and confirmed and that neither of the said defendants Ed-
458–461 mund Webster Fall, William H. Fall, nor Elizabeth Easton, has any right title or interest in, or lien upon said premises nor any part thereof, and they are and each of them is hereby excluded from claiming any interest therein or lien thereon.

It is further ordered that the plaintiff pay the costs of this action taxed at $——.

STATE OF NEBRASKA,
Hamilton County, ss:

I, Fred Jeffers Clerk of the District Court of said Hamilton County do hereby certify that the foregoing is a true and perfect transcript of the record in the above entitled cause, that is to say of the affidavit of A. W. Agee, affidavit of J. C. Work as to the proof of publication of notice and the final judgment rendered on September 30, 1897, as the same is on file and of record in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of my office at Aurora Nebraska, this 27th day of March 1905.

[SEAL.] FRED JEFFERS,
Clerk District Court.

Trans. fee $1.55.

* * * * * * *

462 And afterwards, towit, on the 6th day of December, 1905, there was rendered by said Supreme Court and entered of record upon the Journal thereof a certain Judgment in the words and figures following, to wit:

No. 13737.

SARAH S. FALL, Appellee,
v.
EDMUND WEBSTER FALL ET AL., Appellants.

Appeal from the District Court of Hamilton County.

This cause coming on to be heard upon appeal from the district court of Hamilton County, was argued by counsel and submitted to the court; upon due consideration whereof, the court doth find no error apparent in the record of the proceedings and judgment of said district court; and it is ordered that said judgment of the district court be, and the same hereby is, affirmed; that appellee pay all costs incurred herein by her, taxed at $—, and have and recover from appellants all her costs so expended herein; that appellants pay all costs incurred herein by them, taxed at $—, for all of which execution is hereby awarded, and that a mandate issue accordingly.

463 And on the same day there was filed in the office of the Clerk of said Supreme Court a certain Opinion by said Court, pursuant to which the preceding judgment was entered, which opinion is in the words and figures following, towit:

464 No. 13737.

FALL
v.
FALL.

Opinion. Filed December 6, 1905.

1. The court of one state can not by its decree directly affect the legal title to lands situated in another state, but "if all the parties interested in the land are brought personally before a court of another state, its decree, establishing their equities in the land, would be conclusive upon them and thus in effect determine the title." Dull *v.* Blackman, 169 U. S., 243, 18 Sup. Ct. Rep., 333.
2. When the courts of a sister state having jurisdiction of the parties, and of their equitable rights in all of the property owned by one or both of them, by its findings and decree determines those rights, such decree must, under the provisions of the federal constitution, be given full faith and credit by the courts of this state.
3. The statute of the state of Washington, quoted in the opinion, as construed by the courts of that state, give the courts jurisdiction in the trial of a divorce case to make distribution between the parties of all of the property possessed jointly or severally by the parties upon principles of general equity, "having regard to the respective merits of the parties, and to the condition in which they will be left by such divorce, and
465 to the party through whom the property was acquired." When both parties to the divorce proceedings in that state have appeared before the court, being a court of general jurisdiction, and have asked the court to distribute their property including land in this state, and the court by its decree has done so, its decree is conclusive of the equities of the parties in the real estate situated in this state.
4. Possession of land is notice of equities; and a purchaser of land from one not in possession takes it subject to the equitable right of one in possession thereof.

466 SEDGWICK, *J.*:

This controversy relates to a quarter section of land in Hamilton county. The plaintiff bases her right in the land upon a decree of the superior court of King county in the state of Washington. In 1876 the plaintiff and Edmund W. Fall intermarried in the state of Indiana. Afterwards they removed to this state and became the owners of the quarter section of land now in controversy. After residing here for some years they removed to the state of Washington, and being residents there, an action for divorce was begun by the plaintiff's then husband. In this action she answered denying that any cause for divorce existed against her, and in her cross petition

she asked that it might be found that she was entitled to a divorce, and that a decree in her favor be rendered accordingly. The court decreed a divorce in her favor and also by the decree gave her the land in dispute herein. Under this decree the plaintiff took possession of the land in October, 1895, and has ever since been in the actual possession and occupancy of the land. Afterwards her former husband the said Edmund W. Fall conveyed the land in question to the defendant Elizabeth Eastin. The plaintiff brought this action, setting out a full statement of the rights which she claimed in the land and the facts which she claimed supported these rights, and prayed among other things that her title in the land be quieted and "for all other proper and equitable relief." Much is said in the pleadings and evidence in regard to the conveyance from Edmund W. Fall to the defendant Elizabeth Eastin who is his sister, it
467 being claimed upon the one side that the land was purchased by Mrs. Eastin in good faith and for full consideration, and on the other that the sale was fraudulent; but as Mrs. Fall took possession of the land under the decree before the conveyance to Mrs. Eastin, the latter would, of course, be charged with constructive notice of the rights of the plaintiff, and, as against the plaintiff, would take no further or greater rights than those of her grantor in the conveyance. We will first inquire as to the effect of the decree, and the rights, if any, that the plaintiff took thereunder in the land in question.

1. At the time the divorce proceedings were pending in the state of Washington, and when the decree was rendered therein the statute of that state provided:

"In granting a divorce, the court shall also make such disposition of the property of the parties as shall appear just and equitable, having regard to the respective merits of the parties, and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it for the benefit of the children, and shall make provision for the guardianship custody and support and education of the minor children of such marriage." 2 Stats. & Code Wash. Sec. 2007, Par. 771.

It is contended that the decree entered in pursuance of this statute in the state of Washington could have no extra territorial effect upon real estate situated in another state, or the rights of the parties therein, and this appears to be the gist of the whole conten-
468 tion between the parties. It is clear that the statute in question gives to the court in divorce proceedings complete equitable jurisdiction over the property of the parties situated within the state. The language is apt and pertinent for that purpose. A court that makes a just and equitable disposition of the property of parties litigant in an action, is a court of equity, and the distribution of the property is, at least in part, the subject matter of the litigation. If indeed there could be any doubt in other jurisdictions as to the intention of the legislature in enacting this law, and the force and effect thereof in conferring equitable powers upon the trial court, that doubt has been resolved by the supreme court of that state. In Web-

ster *v.* Webster, 2 Wash., 417, the court in construing this statute said:

"This statute, however, provides, that when coverture is to be broken, and the marriage relations dissolved, that the parties shall bring into court all their property, and a complete showing must be made. Each party must lay down before the chancellor all that he or she has, and after an examination into the whole case, he makes an equitable division. * * * We are clearly of the opinion that Par. 2007 of the code confers upon the court the power in its discretion, to make a division of the separate property of the wife or husband." And indeed the parties themselves so considered it. The plaintiff in that case set out a description of the land here in Nebraska, with other property owned by the parties, alleged its
469 value, and asked the court to make an equitable disposition of it under this statute, and the plaintiff here, who was the defendant in that action, also in her cross petition described this land and asked the court to determine the rights of the parties to all the property which they owned including this land in question. The findings and decree of that court were full and covered all of the issues in the case presented by the pleadings, and adjudged the issues so determined in favor of the defendant in that action who is the plaintiff here. It may be further observed that in that case it was alleged in her cross petition by this plaintiff that the parties to that action had by their joint efforts as husband and wife accumulated the property which they held, including the land in question here, and the court especially found that that allegation of her cross petition was true, and that the property which Mr. Fall had already used for his personal benefit, together with that given him by the decree was his equitable part of all the property of both parties. The same allegations are embraced in the petition in this case and the trial court found especially that they were true, and that the plaintiff had contributed equally to the accumulation of the property, including this land in dispute. The findings of fact of the trial court in this case are also quite comprehensive. These findings were not questioned in the oral arguments, nor do the briefs point us to any failure of the evidence to support them. We will therefore in the farther consideration of the case consider these findings as the established facts in the case.

470 Giving full faith and credit to the decree of the Washington court, as the federal constitution requires us to do, the question is what rights in the land in question the plaintiff derives from that decree.

It is suggested in the brief that "On a cause of action which is purely local a judgment respecting property that is not within the jurisdiction of the court rendering the judgment should not be enforced by the courts of another state where the property is situated." In pursuance of this argument a quotation is made from 2 Black on Judgments, sec. 933 where it is said that if a judgment in an action for divorce goes further than to determine the status of the parties and assumes to adjudicate other matters no personal liability can be imposed on the defendant "unless there is jurisdiction of his

person acquired by a proper service of process." We do not quite understand why this argument is made. In this case the defendant here was the plaintiff in the divorce proceedings and of course there can be no question of jurisdiction of his person.

It is contended in the briefs that the decree of the Washington court and the proceedings afterwards had in that court pursuant to the decree did not and could not have the extra territorial effect to transfer any title either legal or equitable in the land situated in this state to the plaintiff in this action. And that she can not maintain this action without such title. The foundation for this contention is that, under our statute, in an action to quiet title the
471 plaintiff must allege and establish on the trial either a legal or equitable title. It is essential that "he have title and the relief must be obtained on the strength of his own title and not on the weakness of his adversary." But this suggestion of course assumes the proposition that is being discussed. The question under consideration is whether the plaintiff obtained any title either legal or equitable in this land by virtue of that decree. Thus in Blodgett *v.* McMurtry, 39 Nebr., 210, one of the cases cited by the defendant upon this question, it is said: "In an action having for its object the declaration of a trust in land in favor of the plaintiff and the quieting of title in him it is incumbent upon the plaintiff to affirmatively establish an equitable title in himself, and if he fail to do so, the nature of defendant's title, or the existence of any title in defendant, is immaterial."

By the statutes of this state the court in a divorce proceeding has no power to set apart real estate to either party or to make any equitable division of the real estate of the respective parties. And it is urged in the brief that our courts would not be competent to render such decree as was rendered by the superior court of Washington, and from this fact it is argued that by the decree in the court below an effect was given to a judgment of a sister state which no court in this state could have rendered; but in our state the courts may in divorce proceedings adjust the equitable rights of
472 parties in property if such equitable rights exist, and judgments for alimony in divorce cases become liens upon real estate of the party against whom they were entered, and by a sale under such lien the title to the real estate is transferred. The question therefore raised by the foregoing suggestion is one of practice rather than one of substantive law. The methods provided by the law of Washington for adjusting the rights of the parties to a divorce proceeding can not be said to be in conflict with the general policy of the laws of this state. On the other hand the results aimed at are in substance the same, the intention in both states being to give each party a fair share of the property which they have accumulated in common. The superior court of Washington is a court of general jurisdiction. It has full power to settle all equities of the parties, and by the statutes of that state it was confided to the court to make an equitable adjustment and distribution between the parties of all the property owned by them both, or in the language of the court of last resort in that state, it is the duty of the parties to an action

for a divorce "to bring into court all their property. Each party must lay down before the chancellor all that she or he has and after an examination of the whole case he makes an equitable division." No clearer language than this could be used to indicate that the divorce courts there have general equity jurisdiction over the property and property rights of the parties. And that the decree of the court in such a case is a decree in equity as to the property of
473 the parties, and fixes and disposes of their property rights in the same manner as do decrees in equity in courts of general jurisdiction in actions brought for the purpose of determining the equities of the parties in specific property. It can not of course be doubted that, if by the law of the state where the parties reside, one of the parties is given equity in property and in a proper case for that purpose the courts of that state find and adjudicate that right to exist, the courts of another state will not refuse to recognize that decree and give the full faith and credit solely on the ground that under its laws the equitable rights of the parties could not have been adjudicated in the form of action used in the court rendering the decree. We see no reason why the rules that obtain in the adjudication and adjustment of partnership rights would not be applied here. In an action in equity to settle partnership affairs the property of the partnership is considered to be in court for the purpose of the full adjustment of the rights of the partners in the property, and so here the law required that all of the property of the parties to the divorce proceedings be brought into court so that the court might do what the statute required it to do "make such disposition of the property of the parties as shall appear just and equitable," and when the parties have by their pleadings so brought the property into court we see no reason why the force and effect of the decree should not be as full and complete as in similar proceedings for the adjustment of partnership rights and equity.

474 In Burnley *v.* Stevenson, 24 O. St., 474, the court declared the rule to be: "A court of equity in one state, having acquired jurisdiction over the persons of the parties, may enforce a trust, or the specific performance of a contract, in relation to land situate in another state.

Although the decree in such case, or the deed of a master executed in pursuance thereof, can not operate to transfer the title to such lands, yet the decree is binding upon the consciences of the parties, and concludes them in respect to all matters and things properly adjudicated and determined by the court.

When the decree in such case finds and determines the equities of the parties in respect to such land, and directs a conveyance by the parties in accordance with their equities, such decree, although no conveyance has been executed, may be pleaded as a cause of action, or as a ground of defense in the courts of the state where the land is situated; and it is entitled, in the court where so pleaded, to the force and effect of record evidence of the equities therein determined, unless it be impeached for fraud."

In an action for that purpose in the courts of Kentucky, a judgment was entered decreeing the specific performance of a contract to

convey lands in Ohio. Parties who derived title from the plaintiff, who obtained the decree in the Kentucky Court, set up that decree as a defense in an action in Ohio brought to recover possession
475 of the land in the latter state. The defense was sustained. The court said: "That courts exercising chancery powers in one state have jurisdiction to enforce a trust, and to compel the specific performance of a contract in relation to lands situate in another state, after having obtained jurisdiction of the persons of those upon whom the obligation rests, is a doctrine fully settled by numerous decisions." Counsel for the defendant in their brief quote at length from the statement of facts in the opinion in the case, and then say: "This statement of facts clearly shows that the action in the State of Kentucky was based upon the contract to convey by Scott, the ancestor of plaintiffs. When a suit is instituted upon a contract and the court acquires jurisdiction of all the parties to be affected thereby, its judgment is a legal construction of that contract and will bind the parties. Such construction, which becomes a part of the contract, can be plead as the true and legal construction, although a suit thereon be instituted in a foreign jurisdiction." But such judgment of the court not only affects but necessarily determines the rights of the parties to the land lying in another state; so that it is not correct to say that no judgment of a court of one state can affect the rights of the parties in real estate lying in another state. Again if the courts of one state have jurisdiction to affect and virtually determine the equitable rights of parties in real estate lying in another state by construing the contracts of the parties in relation thereto, that is by determining what equities between the par-
476 ties their contracts have raised, why may they not also determine what equities between the parties the law and their respective contributions to accumulating the property, and their conduct towards each other have raised? Counsel say that "Such construction which becames a part of the contract can be plead as the true legal construction although a suit thereon be instituted in foreign jurisdiction." That is to say: in a suit in one state to establish equities in land and to quiet title thereto, the plaintiff may plead the judgment of the courts of another state determining what his rights in the land are, if those rights arise from a contract; and such judgment is conclusive, it will not admit of contradiction. But if the rights of the plaintiff depend upon equitable considerations rising from the relation and the condition of the parties, and the amounts they have respectively contributed towards its purchase, such judgment has no binding force. This distinction seems not to be based upon any difference in principle. The Washington Court, as has already been suggested, by the law of that state, had undoubted jurisdiction of all of the equities of the parties, and it was expressly made the duty of the court, by the law of the state, upon separating the parties, to adjust and declare what their equitable rights were in all of the property which they both possessed. We do not see why its judgment upon these issues should not have the same force in determining the rights of the parties to real estate situated in
477 another state, as though those rights originated in an express contract between them.

In Pingree *v.* Coffin, *et al.*, 78 Mass. (12 Gray), 288-304, the court said: "The fact of the situs of the land being without the Commonwealth does not exempt the defendants from jurisdiction, the subject of the suit being the contract, and a court of equity dealing with persons, and compelling them to execute its decrees and transfer property within their control, whatever may be the situs. These defendants, having been found within the jurisdiction of the court, and served with its process, and having appeared and answered originally without objection to the jurisdiction, will not be presumed to be without its jurisdiction so that its decrees can not be executed. If such event should occur, it will be time to determine what remedies the plaintiff might have. But it seems that their personal property within the Commonwealth might be sequestered. 2 Dan. Ch. Prac., 1236, 1237. The Court might retain the mill, and, under the general prayer for relief, mould the decree to one of damages for non-conveyance. Andrews *v.* Brown, 3 Cush., 136, Peabody *v.* Tarbell, 2 Cush., 226. And a decree of this court might be a foundation for other courts to compel performance specifically." In the state of Washington, in an action to dissolve a marriage, the subject of litigation is the marriage status, and the equitable rights of the parties in the property of both upon their separation, and so the action being *in personam* a degree of that court in such action
"might be a foundation for other courts to compel perform-
478 ance specifically."

Dull *v.* Blackman, 169 U. S., 243, 18 Sup. Ct. Rep., 333, was an action brought in Iowa "to compel reconveyance of real estate situated in that state on the ground of the defendant's failure to advance money thereon as agreed." A defense set up in the action by an amended answer was that a judgment had been recovered in the state of New York in an action involving the same question and between the same parties. The validity of this defense was denied upon two grounds as shown in the opinion of Mr. Justice Brewer as follows: "Upon these facts we remark that as the land, the subject-matter of this controversy, was situated in Iowa, litigation in respect to its title belonged properly to the courts within that state (Ellenwood *v.* Chair Co., 158 U. S., 105, 107, 15 Sup. Ct., 771) although, if all the parties interested in the land were brought personally before a court of another state, its decree would be conclusive upon them and thus, in effect, determine the title." The other reason given was that the defendant in the Iowa case who held the title to the land although he obtained his title from a party to the New York decree was not in privity with him, because he obtained his title before the commencement of the New York action. It is said in the syllabus: "A grantee of lands is not bound by a judgment rendered in an action commenced against his grantor subsequent to the conveyance." From which it appears that if the
New York action had been begun before the conveyance of
479 the Iowa land to the defendant, and he had been a party to the New York decree, he would have been bound by that judgment, and would have been compelled by the Iowa court to convey the land.

In the defendant's brief we are earnestly requested to carefully consider Bell *v.* Bell, 181 U. S., 175, 21 Sup. Ct. Rep., 551; Streitwolf *v.* Streitwolf, 181 U. S., 179, 21 Sup. Ct. Rep., 553, and Andrews *v.* Andrews, 188 U. S., 14, 23 Sup. Ct. Rep., 237. In Bell *v.* Bell, it is held that—"No valid divorce can be decreed on constructive service, by courts of a state in which neither party is domiciled. The recital in proceedings for divorce, of the facts necessary to give jurisdiction, may be contradicted in a suit between the same parties in another state." The other cases mentioned are similar to this. The point, however, relied upon in these cases we suppose is to be derived from the opinion, in which it is held that an action for divorce, that is, to dissolve the marriage status between the parties, is a local action, and that no court has jurisdiction to dissolve the marriage status except the court of the domicile of the parties or one of them. We do not see how this proposition has any bearing upon the question involved here. Both of these parties were domiciled in the state of Washington at the time of the divorce proceedings, so that the courts of that state had jurisdiction of their marriage relation, and by the laws of that state that court was also given the further jurisdiction to determine and adjust the equities of
480 the parties in the property of both.

And it is sought to draw an argument from the language used in the decree of the Washington court. It was adjudicated that the land in question "be and the same hereby is set apart to the defendant Sarah S. Fall as her own separate property forever free and unincumbered from any claim of the plaintiff thereto." The law required the court to determine the equitable rights of the parties in all of their property, and it is possible that language might be selected to more nearly correspond with the requirements of their law in that regard. The court found that the defendant therein, Sarah S. Fall, "is entitled to a decree of this court setting apart to her as her own separate property forever * * * * a certain tract of real esate, to-wit:" (describing the land in question) and the language of the decree is sufficient as far as formalities are concerned to adjudicate her equities in the land. The defendant asks in his brief "Was the title to the land in question at issue in the divorce suit, and did that court possess jurisdiction to determine the question of title?" We think it should rather be said that the right to the land was in issue and the equitable right to have title, rather than the legal title itself.

Our attention is also called to Kline *v.* Kline, 57 Ia., 386, 42 Am. Rep., 47. In that case the wife and children were residing in Iowa, the husband was a resident of Wisconsin and there obtained a divorce from his wife upon the ground of desertion. The
481 service was by publication only. The wife had no notice nor actual knowledge of the legal proceedings. The decree of the Wisconsin court gave the husband the custody of the children. The supreme court of Iowa refused to enforce this decree. Its reason is stated in a quotation which the court makes from Woodworth *v.* Spring, 4 Allen, 321: "Every sovereignty exercises the right of determining the status or condition of persons found within

its jurisdiction. The laws of a foreign State can not be permitted to intervene to affect the personal rights or privileges even of their own citizens, while they are residing on the territory and within the jurisdiction of an independent government. * * * The question whether a person within the jurisdiction of a state can be removed therefrom depends, not on the laws of the place whence he came, or in which he may have had his domicile, but on his rights or obligations as they are fixed and determined by the law of the State or country in which he is found.

If the law of Wisconsin had given their courts jurisdiction in a divorce proceeding to determine the custody of the children, and if both parties had there appeared and submitted themselves to the jurisdiction of the court, and had asked the court to determine to which party the custody of the children should be given, the Iowa court might still have refused to banish the children from its state because of the personal rights of the children themselves; but the case would have been very different from the one presented
482 to and determined by the Iowa court.

The case of Bullock *v.* Bullock decided by the court of Errors and Appeals of New Jersey, 30 Atl., 676, is much relied upon by the defendant. Indeed this is the only case to which our attention has been drawn which conflicts in some degree at least with the conclusion which we have reached. The opinion of the court as announced by Magie, J., appears to contain language which in its literal meaning supports the contention of the defendant. The wife had obtained a divorce in the state of New York with a decree for permanent alimony, and also decreeing that the husband should execute a mortgage upon land situated in the state of New Jersey to secure the payment of the alimony. An action was brought in the state of New Jersey to compel the specific performance of this decree by executing the mortgage upon the lands in that state. The court held that such a decree would not be enforced in the state of New Jersey. In the opinion it is stated that the petition alleged that the action commenced in New York was for the purpose of dissolving the marriage of the parties, and alleged that the court had jurisdiction of the case. The writer of the opinion said: "I find difficulty in determining how extensive a jurisdiction is thereby asserted to have inhered in the supreme court of New York. * * * From these statements it was obviously to be assumed that the court in question had jurisdiction to decree a divorce and annul a marriage. But is it to be inferred—for there is no express averment of it—that
483 the same court possessed jurisdiction to fix the amount and require payment of alimony, and especially to require a defendant to secure the payment of alimony by a charge upon lands lying beyond the territorial jurisdiction of the court? Alimony is, in general, an incident of divorce. It may be justifiable to infer that a court empowered to dissolve the bonds of matrimony would also be clothed with authority to determine on the amount of alimony, and to render judgment therefor. But how, without some further averment, is an inference to be drawn that the same court was authorized to require security for the payment of alimony to be given by the

mortgage of lands, and of lands beyond its jurisdiction?" One member of the court concurs in the conclusion solely upon the ground expressed in the above quotation, and five members of the court refused to agree to the conclusion reached, so that the language of the remainder of the opinion which one member of the court, at least, who concurred in the conclusion, thought unnecessary to the determination of the case, and from which five members of the court dissent, is not to be regarded as authority of a controlling nature. Van Syckel, J. in his dissenting opinion said: "The New York court having jurisdiction of the person of the husband, and also of the subject matter of the suit there, the judgment in that state, as between the parties to that suit., was conclusive, of the right of the wife to have the husband execute a mortgage upon the New Jersey lands, although it did not of its own force create a lien upon the lands. As to
484 the title to such lands, it had the effect of an admitted legal contract or obligation by the husband to convey, and should be enforced in equity here. A judgment in New York that a party defendant shall specifically perform a written contract to convey lands in New Jersey would furnish no better foundation for the interference of our court of equity than the judgment relied upon in this case. In what respect a different principle is not apparent. In either case, obedience to the mandate of the federal constitution would give effect to the judgment here."

The reasoning of the minority opinion is more satisfactory to our minds, and we think is in harmony with the better authorities. It may further be observed that this case is distinguishable from the one at bar. This will be observed from a consideration of the concurring opinion of Mr. Justice Garrison who said: "That only is judgment that is pronounced between the parties to the action upon the matters submitted to the court for decision. To judgments thus rendered, the federal law accords in every state the same conclusive force possessed in the state where they are rendered. After judgment in a state court, all that follows for the purpose of enabling the successful party to reap the benefits of the determination in his favor is execution, or in aid of execution. No interpretation has ever been placed upon the federal constitution giving conclusive effect, or, indeed, any effect at all, to the executions of the judgments
485 rendered in sister states, or to any order merely in aid thereof." This view appears to have been unanimously taken by the chancery court when the case was there considered. 27 Atl., 28. In the case at bar it seems that the Washington judgment was "pronounced between the parties to the action upon the matters submitted to the court for decision." Under such circumstances Mr. Justice Garrison at least would not have concurred in the conclusion reached in Bullock *v.* Bullock. In that case there was a judgment for the payment of alimony and a decree that it should be secured. It was this decree that was sought to be enforced in another state. The providing for the collection of the amount of alimony due under the decree was thought to be in the nature of an execution, or in aid thereof, that is, a part of the remedy, which is always provided by the state in which it is to be used. In the case at bar the judgment

was not for alimony. Alimony is decreed for the necessary support of the wife. This land was decreed to her, not because she needed it, but because she was entitled to it, not necessarily for the purpose of her support but because the equities arising out of her marriage relation under the laws of Washington, and the conduct of her husband toward her, and her personal contributions toward the accumulation of the property, entitled her to this land, and the law required the court to consider, determine and adjust her equities.

The decree of the Washington Court determined that it is
486 "just and equitable" that this plaintiff have the land, that was a proper issue to be presented under the law; the court had jurisdiction of the matter and of the parties. If we give "full faith and credit" to that decree we must affirm the judgment of the lower court.

Affirmed.

BARNES, *J.* (dissenting):

I am unable to concur in the foregoing opinion. Conceding that the Superior Court of the state of Washington had jurisdiction of the parties and power to render the decree which it pronounced between the plaintiff and her former husband, Edmund W. Fall, still that decree had no extra territorial force and could not create or affect the title to lands situated in Nebraska. And while such decree is no doubt binding upon the conscience of each of the parties thereto it does not give the plaintiff such an interest in the land in controversy as amounts to a title and which will serve as a basis to quiet the same. It does not seem to me that the clause of the Federal Constitution which provides that we shall give full faith and credit to the judgments and decrees of the courts of our sister states, requires us to give such judgments more force or greater effect than they would have had if rendered by the courts of our own state.

487 And afterwards, to wit, on the 12th day of January, 1906, there was filed in the office of the Clerk of said Supreme Court, a motion of Elizabeth Eastin for rehearing, in the words and figures following, to wit:

488 In the Supreme Court of Nebraska.

SARAH S. FALL, Plaintiff and Appellee,

v.

EDMUND W. FALL, WILLIAM H. FALL, Defendants; ELIZABETH EASTIN, Defendant and Appellant.

Motion for Rehearing.

The above named Elizabeth Eastin, appellant herein, moves the court for a rehearing of this cause for the reason there is manifest error in the judgment and opinion filed herein by this court in the following particulars, to wit:

1. The court misapprehended the facts in this cause in that (*a*) The court assumes that the plaintiff and appellee, Sarah S. Fall, had some interest, title or estate in and to the lands in controversy

other than as mere wife of Edmund W. Fall, when in truth the record fully and without conflict discloses that she had at no time any interest whatever in said lands other than as wife of said Edmund W. Fall.

(*b*) The court assumes that the said Sarah S. Fall, "contributed equally" with Edmund W. Fall in the accumulation and acquisition of said lands, when in truth and on the contrary the record discloses that she did not contribute to the accumulation or acquisition of said lands in any degree or proportion or in any manner except as housewife for her husband, Edmund W. Fall, and that said land was acquired by his labor and earnings.

(*c*) The court assumes that the plaintiff and appellee, Sarah S. Fall, took possession of the land in controversy under the Washington decree mentioned in the record prior to any conveyance of such land to the defendant and appellant, Elizabeth Eastin, when in truth the record without contradiction discloses that said Elizabeth Eastin acquired a mortgage and interest in said lands five months prior to the date of said Washington decree and six months
489 prior to the time when said Sarah S. Fall took possession of said lands; and said Elizabeth Eastin obtained and recorded her deed for said lands prior to the rendition of final judgment in the Supreme Court of the State of Washington, and at a time when the judgment declared upon herein by the plaintiff and appellee, Sarah S. Fall, stood superseded.

(*d*) This court entirely overlooked the fact that the record introduced by the plaintiff and appellee, Sarah S. Fall, shows without conflict that she was not, at the time this action was commenced, the owner of the Washington judgment declared upon by her, but on the contrary that prior to the commencement of this action the said Sarah S. Fall had duly and for value received assigned said judgment to one L. Chopard, who has ever since been and now is the legal owner of said Washington judgment.

2. The court in its said judgment and opinion erred touching the law of this case in this:

(*a*) In holding that the Washington Court which rendered the judgment declared on in this case had either power or jurisdiction to affect in the least the title, either legal or equitable, of Edmund W. Fall to lands situated in the State of Nebraska.

(*b*) In holding that the Washington judgment declared on in this case vested any title, either legal or equitable, in the plaintiff and appellee, Sarah S. Fall.

(*c*) In holding that the plaintiff and appellee, Sarah S. Fall, has any title to the land in controversy; and in holding that the said Sarah S. Fall has sufficient title to maintain this action, which is one brought to quiet title.

(*d*) In holding that the Washington statute and the decision of the Supreme Court of that state declared upon in this case have any effect whatever upon the title to lands in the State of Nebraska.

(*e*) In holding that the Washington statute or any decision of any court of the State of Washington rendered thereon has any

effect whatever upon the title of the defendant and appellant, Elizabeth Eastin, in and to the lands here in controversy.

(*f*) In holding there is no conflict of laws between those which obtain in the State of Washington as declared upon in this cause and those of the State of Nebraska, touching alimony and the division of property between husband and wife on a decree
490 of divorce being rendered, and that the only difference between the laws of the said two states is one of practice.

(*g*) In holding that the pronouncement of the Washington court, and declared upon in this cause, was not only binding upon the parties thereto but may be enforced in this state against a grantee of the owner of lands situate in this state, such grantee not being a party to the Washington suit, and which grantee had, prior to such pronouncement and decree, in accordance with the laws of this state taken an absolute conveyance of said lands.

(*h*) In holding that, notwithstanding no court of this state has the power in a divorce suit to award land from one spouse to another, yet since the State of Washington by its laws gives to the courts of that state such right, a judgment of a Washington court so awarding lands in this state will be enforced by our courts; and that on such Washington judgment alone our courts will quiet the title to the lands awarded by such Washington judgment in the person in whose favor such judgment was rendered.

(*j*) The judgment and opinion complained of is erroneous in that "under the laws of this state and the provisions of Ch. 25, p. 276, Comp. St. 1901, Neb., a court has no jurisdiction to award real estate of the husband to the wife in fee as alimony, and a decree in so far as it attempts so to do is void and subject to collateral attack." The law of this state, as stated in this paragraph of this motion, was duly announced by this court in the case of Cizek *v.* Cizek, 99 N. W. 28, and adhered to in the case of Aldrich *v.* Steen, 100 N. W. 312, and which cases were each duly cited to this court in the several briefs of appellant herein, but which cases and each of them were entirely overlooked and not referred to by the court.

The opinion and judgment in this case announce and are based upon a proposition of law directly contrary to that announced in said cases of Cizek *v.* Cizek and Aldrich *v.* Steen and the Statute of this state herein referred to.

This motion is supported by printed briefs filed herewith.

ELIZABETH EASTIN,
Defendant and Appellant,
By HAINER & SMITH,
Her Attorneys.

491 [Endorsed:] 13737. Fall *v.* Fall. Motion for rehearing. Sustained 3, 21, '06. Dec. 6/06. Opinion by Sedgwick, J. Barnes, J., dissenting. N. W. Rep. Supreme Court of Nebraska. Filed Jan. 12, 1906. H. C. Lindsay, clerk.

492–496 And afterwards, to wit, on the 22nd day of March, 1906, there was rendered by said Supreme Court and

entered of record upon the Journal thereof, a certain Order in the words and figures following, to wit:

No. 13737.

SARAH S. FALL, Appellee,
v.
EDMUND WEBSTER FALL ET AL., Appellants.

Appeal from the District Court of Hamilton County.

This cause coming on to be heard upon motion of appellant Elizabeth Easton for a rehearing herein, was submitted to the court; upon full consideration whereof, the court doth find error apparent in the judgment heretofore entered herein by this court; it is therefore considered, ordered and adjudged that said motion be, and the same hereby is, sustained and a rehearing herein granted.

* * * * * * *

497 And afterwards, towit, on the 12th day of July, 1907, there was rendered by said Supreme Court and entered of record upon the Journal thereof, a certain Judgment in the words and figures following, towit:

No. 13737.

SARAH S. FALL, Appellee,
v.
EDMUND WEBSTER FALL ET AL., Appellants.

Appeal from the District Court of Hamilton County.

This cause coming on to be heard upon a rehearing heretofore granted herein, was argued by counsel and submitted to the court; upon due consideration whereof the court doth find probable error in the record of the proceedings and judgment of the district court; it is therefore considered, ordered and adjudged that the judgment of this court heretofore entered herein be, and the same hereby is, vacated, and the judgment of the district court reversed and cause remanded to the district court with directions to proceed in accordance with the opinion filed herein, and if plaintiff so desires to take an accounting of the rents and profits and disbursements, and to render such decree as may be equitable; that appellants pay all costs incurred herein by them, taxed at $—, and have and recover from appellee all their costs so expended herein; that appellee pay all costs incurred herein by her, taxed at $—, for all of which execution is hereby awarded, and that a mandate issue accordingly.

498 And on the same day there was filed in the office of the Clerk of said Supreme Court a certain Opinion by said Court, pursuant to which the preceding judgment was entered, which Opinion is in the words and figures following, towit:

499 No. 13737.

SARAH S. FALL, Plaintiff and Appellee,
v.
MUND W. FALL and WILLIAM H. FALL, Defendants; ELIZABETH EASTIN, Defendant and Appellant.

Syllabus.

1. A court of Chancery has power in a proper case to compel a conveyance of land situated in another country or state when the persons of the parties interested are within the jurisdiction of the court.
2. If no action is taken by the person ordered so to do, either voluntarily or involuntarily, to convey the land as directed neither the decree nor the order to convey can in any manner affect title to lands in another state.
3. A decree and order to convey in such a case can act only upon the person and cannot affect the title to the land. It imposes a mere personal obligation enforceable by the usual weapons of a court of Chancery.
4. The clause of the Constitution of the United States requiring full faith and credit to be given in each state to the public acts,
500 records, and judicial proceedings of every other states does not prevent the courts of this state from examining the records of the courts of a sister state to ascertain whether or not that court had jurisdiction of the subject matter.

501 LETTON, *J.*:

This is an action to quiet the title to an undivided one half interest in a certain tract of land in Hamilton County, and to cancel and annul a certain mortgage and deed executed by the defendant, Edmund W. Fall, to the defendants W. H. Fall, and Elizabeth Eastin. The plaintiff, Sarah S. Fall, bases her right to the relief prayed upon a decree rendered in divorce proceedings in the State of Washington, whereby a court of that State set apart the premises to her as her separate property and ordered her former husband, E. W. Fall, to convey the same to her.

In 1876, E. W. Fall and Sarah Fall were married in Indiana. They afterwards removed to Hamilton County, Nebraska, and lived in Nebraska until 1889 when they removed to the State of Washington. In 1879, while they lived in Nebraska, E. W. Fall purchased 160 acres of land in Hamilton County, the title to the undivided one half of which is in controversy. In 1887 he conveyed the farm to Mrs. Fall's brother as an intermediary, who in turn reconveyed to E. W. Fall and Sarah S. Fall, thereby vesting each with an individual one half interest in the land.

E. W. Fall began an action for divorce against his wife in February, 1895, in the Superior Court of King County, Washington, to which she filed an answer and cross petition. The law of Washington required parties desiring a divorce to bring into court a list and

description of all their property, and empowers the Judge of the Court, sitting as a Chancellor, to make an equitable division of all the property between the parties. (See former opinion, 106 N. W. 412.) The husband in his petition claimed the Nebraska land as his own property, while the wife asserted the same to be community property belonging to them both, and asked the court to set it apart to her as her separate property. On October 5th, 1895, by
502 its decree the Washington Court refused a divorce to the husband and granted it to the wife on her cross petition, and set apart and gave all the Nebraska land to the wife as her sole and separate property, and directed the husband to convey the land to the wife in five days, which he refused and neglected to do. An appeal bond was filed and the cause was taken to the supreme court of Washington by Mr. Fall, but on May 15th 1896, the appeal was dismissed.

On May 24th 1895, E. W. Fall executed an indemnity mortgage to his brother, the defendant W. H. Fall, a resident of Nebraska, as defendants allege to secure him from loss by reason of his having signed a note of $1000.00 as surety for E. W. Fall in September, 1893, for money borrowed from his sister, Elizabeth Eastin. This mortgage was recorded on January 10, 1896. On July 3, 1896, without notice to E. W. Fall, the Washington Court appointed one W. T. Scott as commissioner for the purpose, who executed a deed of E. W. Fall's undivided half interest in the Hamilton county land to Sarah S. Fall. This instrument was approved by the Judge of the Superior Court, filed in the office of its clerk and afterwards recorded in Hamilton county, Nebraska. At the time of these various conveyances the land was in the actual possession of a tenant of E. W. Fall and Sarah S. Fall, but this tenant attorned to Sarah S. Fall, who has held possession ever since. On April 27, 1896, and while the appeal was pending, E. W. Fall, who in the meantime had become a resident of California, executed a warranty deed to Mrs. Eastin for his undivided one half interest in the land in payment of the same debt. At the time of the divorce and conveyances the land was incumbered and Fall's interest was apparently worth no more than the amount of the debt.

In 1897 Sarah S. Fall began this action in the district court of Hamilton County, Nebraska, setting up the proceedings and decree in the State of Washington, the execution of the deed to her
503 by Scott, Commissioner, the execution and recording of the mortgage to W. H. Fall and the deed to Mrs. Eastin and alleging that the mortgage and deed were each made without consideration and for the purpose of defrauding her, and that the mortgage and deed cast a cloud upon her title to the land acquired by virtue of the decree and commissioner's deed, and praying that the title to the land be quieted in her and the deed and mortgage declared null and void. Personal service was had upon W. H. Fall, who disclaimed any interest in the premises and executed a release of the mortgage made to him by E. W. Fall. Constructive service was sought to be had upon Mrs. Eastin and E. W. Fall by publication, which service was defective as to Mrs. Eastin. This fact not

appearing at the time, and default being made, a decree was entered on September 23, 1897, in favor of Mrs. Fall in accordance with the prayer of her petition. Within five years thereafter, upon Mrs. Eastin's application, this default judgment was opened under the statutory provisions and she was allowed to defend. Mrs. Eastin filed an answer, which pleads in substance that the petition does not state a cause of action, and in addition thereto sets forth her loan of $1000.00 to E. W. Fall, the taking of the note signed by E. W. and William H. Fall, therefor, the giving of the indemnity mortgage to William H. Fall and the subsequent execution of the deed by E. W. Fall to her in satisfaction of the debt. She further alleged the *bona fides* of the transaction and denied the remaining allegations of the petition. No appearance was made by E. W. Fall and no personal service was had upon him. Trial was had, the issues found in favor of the plaintiff, Sarah S. Fall, and a decree rendered accordingly. The case is now before us upon appeal by Mrs. Eastin from this judgment of the district court.

The contentions of the appellant in substance are, that the
504 decree of the Washington court and the deed executed by the Commissioner of said court to Mrs. Sarah S. Fall are absolute nullities in so far as they relate to the land in Nebraska. That Mrs. Fall has no such title or interest in the undivided half interest in the land which had belonged to E. W. Fall, that she can maintain this action. That conceding that the Washington court had the power to compel the execution of the conveyance by E. W. Fall while he was within its jurisdiction, still that since its decree acted only upon the person and not upon the land, and that since no action was taken or compelled towards conveying the title to Mrs. Fall, she never acquired any interest in or title to the real estate in this state, and that the decree of the Washington court utterly failed to affect the land or to bind or fetter any action taken by E. W. Fall after he passed beyond the jurisdiction of that court. She further contends that by the laws of this state the courts of Nebraska are not permitted, by a decree in a divorce proceeding, to take the title of real estate from the husband and vest it in the wife, by way of adjusting the equities of the parties in the property of the husband and that such a proceeding would be in violation of the law and public policy of this State. Upon the other hand, the appellee, Mrs. Fall, contends that the decree of the Washington court in the proceedings for divorce and for a division of the property fixed the equities and bound the conscience of the parties and created a personal legal contract of record on the part of E. W. Fall to make a conveyance of his interest in the land which he could not escape by going beyond the jurisdiction of the Washington court, and that the decree is entitled to the same faith and credit in the courts of this state that it has in the courts of Washington; that Mrs. Fall's rights in and to the land, acquired by virtue of the decree, are sufficient to enable her to maintain an action in this state for the purpose of
505 quieting her title to the land; that the decree of the Washington court bound E. W. Fall to such an extent that neither he nor his privies could afterwards set up any right or title in the

Nebraska lands against her, and that Mrs. Eastin acquired no right, title or interest in the land by virtue of the deed from E. W. Fall or the mortgage to W. H. Fall, and that the same were fundamentally made.

If the Washington court had taken the value of the Nebraska land into consideration in fixing the rights of the parties and rendered a money judgment accordingly, such a judgment might be enforced here under the full faith and credit clause of *of* the United States Constitution, since the court had full power and jurisdiction to render the same. Barker *v.* Barker, 21 Howard, 16 L. Ed. 226; Trobridge *v.* Spinney, 23 Wash., 48, 62 Pac. 125, and this has been the usual method in such cases. 2 Bishop, Marriage, Divorce and Separation, 1123. But what power had the Washington court to affect the title to the land or to confer equities therein by its decree? The purpose of the statutes of Washington referred to evidently was to give the courts of that state powers with reference to the ascertainment of the duties of the parties with reference to property, growing out of the marriage relation, of the same nature as those which are enjoyed by courts generally having jurisdiction over divorce, alimony and the custody and support of children, but greater in extent than those enjoyed by the courts of some states. This power was unknown to the unwritten law, and when no Statute exists the courts do not possess it. 2 Bishop, Marriage, Divorce & Sep. Sec. 1119. The power thus given is to be exercised in connection with the proceedings concerning the marriage status, *ibid.* Sec. 826. It is remedial and ancillary to the divorce proceedings and not independent. In that state the same marital duties which are enforced here by way
506 of alimony may be enforced by the compulsory division of real estate belonging to either spouse. This division of property is not based upon the view that the innocent party has an equitable interest in the property itself, but upon the fact that it is the duty of a husband to provide for, support and maintain his wife in such manner as suits and accords with his pecuniary circumstances and station in life, so that she being innocent shall not suffer from his fault. It is of the same nature as that exercised by the courts of Nebraska in awarding permanent alimony. In such a case it is the duty of the court to consider the condition, situation and standing of the parties, financial and otherwise, the duration of the marriage, the amount and value of the husband's estate, the source from which it came and the necessity for the support and education of children. It is a method of enforcing the duty of support and maintenance. Fischli *v.* Fischli, 1 Blackford, 360, 12 Am. D. 251; Shafer *v.* Shafer, 10 Neb., 468; Cochran *v.* Cochran, 42 Neb., 612; Zimmerman *v.* Zimmerman, 50 Neb., 80; Smith *v.* Smith, 60 Neb. 273.

It is well established that a court of Chancery in a proper case has power to compel a conveyance of lands situated in another country or state where the persons of the parties interested are within the jurisdiction of the court. It is said by Justice Story, "The ground of this jurisdiction is, that courts of equity have authority to act upon the person; *Aequitas agit in personam*, and although they cannot bind the land itself by their decree, yet they can bind the con-

science of the party in regard to the land; and compel him to perform his agreement according to conscience and good faith." 2 Story, Eq. Sec., 743; Pomeroy's Eq. Jur. 1318.

The leading case upon this doctrine in England is Penn *v.* Lord Baltimore, 1 Ves. 444, in which the Chancellor of England decreed a specific performance of a contract respecting lands lying in North America. This case was followed in Massie *v.* Watts, 6 Cranch. 148, in a learned opinion by Chief Justice Marshall, which exam-
507 ined and reviewed the cases prior to Penn *v.* Lord Baltimore, and announced the rule as follows: "Upon the authority of these cases and of others which are to be found in the books, as well as upon general principles, this court is of opinion that in a case of fraud, or trust, or of contract, the jurisdiction of a court of Chancery is sustainable wherever the person be found, although lands not within the jurisdiction of that court may be affected by the decree." This case settled the law upon this point, and its principal doctrine has ever since been recognized and enforced by the courts of Chancery in this country. But, says Judge Story, "Still, it must be borne in mind, that the doctrine is not without limitations and qualifications; and that to justify the exercise of the jurisdiction in cases touching lands in a foreign country, the relief sought must be of such a nature as the court is capable of administering in the given case. We have already seen that a bill for a partition of lands in a foreign country will not be entertained in a court of equity, upon the ground that the relief sought cannot be given by issuing a commission to such foreign country. Perhaps, a more general reason might be given, founded upon the principles of international law, and that is, that real estate cannot be transferred, or partitioned, or charged, except according to the laws of the country in which it is situated. 2 Story's Eq. Sec., 1297.

It is conceded by the appellee that the decree of the Washington court has no force and effect on the title to property here, but it is contended, mainly upon the authority of Barnley *v.* Stevenson, 24 O. St. 474, that though the decree of the court of Washington could not affect the title to land in this state, yet that when this decree is pleaded in the Nebraska court as a cause of action, it must be regarded as conclusive of all the rights and equities which were adjudicated and settled in the divorce case. A number of cases
508 have been cited in which it is said this principle is upheld, but we have yet been unable to find a single case in which the direct question at issue was whether or not a decree affecting the title to real estate lying in another state will be recognized in the state in which the land lies where no conveyance has been made in obedience to the decree and where the title has been conveyed to third parties. It is true that in Cheever *v.* Wilson, 9 Wall. 108, and in Dull *v.* Blackman, 169 U. S. 243, 18 Sup. Ct. Rep. 333, there are certain obiter expressions which are quoted in support of such doctrine, but in these cases this question was not before the court for decision, in Cheever *v.* Wilson, an instrument having been executed in performance of the decree, and in Dull *v.* Blackman, the case was decided upon another point. We think there can be no doubt that

where a court of Chancery has by its decree ordered and directed persons properly within its jurisdiction to do or refrain from doing a certain act, it may compel obedience to this decree by appropriate proceedings, and that any action taken by reason of such compulsion is valid and effectual wherever it may be assailed. In the instant case, if Fall had obeyed the order of the Washington court and made a deed of conveyance to his wife of the Nebraska land, even under the threat of contempt proceedings, or after duress by imprisonment, the title thereby conveyed to Mrs. Fall would have been of equal weight and dignity with that which he himself possessed at the time of the execution of the deed.

Gilliland *v.* Inabnit, (Ia.) 60 N. W. 211, was a case of this kind where the controversy was between the plaintiff who was the grantee in a conveyance of land in Iowa which had been compelled by a Kentucky court and the heirs of her grantor. The Iowa court held that the decree of the Kentucky court established the trust, and that the conveyance made in consequence of such decree was
509 valid and effectual to convey the Iowa land, even though made by compulsion and by imprisonment of the grantor.

It is said in an exhaustive note to Newton *v.* Bronson, 13 N. Y. 587, 67 Am. Dec., 89, by Mr. Freeman: "From the very nature of the property, land must be governed by the *lex loci rei sitæ*. No judgment of the court of another jurisdiction can have any effect upon the title to the property. And the power of equity in decreeing the conveyance of land is effectual only upon the person, not upon the land. The decree does not change the title to the land. It remains the same as before until the person in whom the title resides either voluntarily or perforce obeys the decree of the court and divests himself of the title by a conveyance valid under the *lex loci*. The decree of Chancery, then, with respect to realty beyond its jurisdiction, can have no direct operation upon the property, and *per se* in no way affect the legal or equitable title thereto. Carrington *v.* Brents, 1 McLean, 167; Massie *v.* Watts, 6 Cranch, 148; Hawley *v.* James, 32 Am. Dec. 623; Proctor *v.* Ferebee, 1 Ired. Eq. 146." See also Cooley *v.* Scarlett, 38 Ills. 316; Westlake's Private International Law, 64; Proctor *v.* Proctor, 215 Ill. 275, 69 L. R. A. 673, and monographic note.

In Wymer *v.* Wymer, 82 Va., 890, 3 Am. St. Rep. 127, it is said, speaking of cases under the general rule: "But as to these cases it must be borne in mind that the decrees of the foreign court do not directly affect the land but operate upon the person of the defendant and compel him to execute the conveyance and it is the conveyance which has the effect and not the decree." Citing Davis *v.* Headley, 22 N. J. Eq., 115; 4 Minor's Inst., Part 2, p. 1201.

In Lindley *v.* O'Reilly, 50 N. J. Law, 636, 7 Am. St. Rep. 803, it is said: "The principle upon which this jurisdiction rests is that Chancery, acting *in personam*, and not *in rem*, holds the conscience of the parties bound without regard to the situs of *of* the
510 property. It is a jurisdiction which arises when a special equity can be shown which forms a ground for compelling a party to convey or release or for restraining him from asserting the

title or right in land so situated and *is strictly limited to those cases in which the relief decreed can be* obtained through the parties' personal obedience. The decree in a suit of this aspect imposes a mere personal obligation enforceable by injunction, attachment or like process against the person and cannot operate *ex proprio vigore* upon lands in another jurisdiction to create, transfer or vest a title." Carpenter *v.* Strange, 141, U. S. 87; Bullock *v.* Bullock, 52 N. J. Eq., 561; Story, Conflict of Laws, Sec. 543; Wharton, Conflict of Laws, Sec., 288, 289; Watkins *v.* Holman, 16 Pet. 25; Northern I. R. Co. *v.* Mich., Cent. R. Co., 15 How., 233; Davis *v.* Headley, 22 N. J. Eq., 115; Miller *v.* Birdsong, 7 Baxter, 531; Gardner *v.* Ogden, 22 N. Y. 327; Hayden *v.* Yale, 45 La. Ann. 362; 40 Am. St. Rep. 232; Allen *v.* Buchanan, 97 Ala., 399, 38 Am. St. Rep. 187; Langdon *v.* Sherwood, 8 Supt. Ct. Rep. 429, 124 U. S. 74; Appeal of Clark, 70 Conn. 195, 40 Atl. 155, affirmed 178 U. S. 186, 20 Sup. Ct. Rep. 873; Monographic Note on page 673, 69 L. R. A.; Short *v.* Galway, 83 Ky. 501, 4 Am. St. Rep. 168.

The case of Bullock *v.* Bullock, *supra*, deserves special examination. In this case the complainant's husband had been adjudged by the supreme court of the state of New York in a divorce proceeding of which it had jurisdiction, to execute a mortgage upon lands in New Jersey to secure the payment of a certain sum per month to the complainant as alimony. He refused to do so and made other mortgages and conveyances of the lands which the wife alleged were fraudulently made for the purpose of defeating her rights. She charged that she had acquired an equitable lien in the lands by virtue of the New York decree, and prayed the court to set aside the several mortgages and conveyances, and that he be decreed to
511 *to* execute and deliver the mortgage required by the New York Court. It will be seen therefore that the case was similar to the one at bar, but it was stronger in this respect, that personal service was had upon the respondent in New Jersey in the action to enforce the decree, while in this case, no personal service has been had upon E. W. Fall. The majority of the court held that while the New York court might have enforced the execution of the mortgage by the defendant while he was within its jurisdiction, this not having been done, the New York decree could not operate as a cause of action affecting the title to land in New Jersey, and it is pointed out "that the doctrine that jurisdiction respecting lands in a foreign state is not *in rem*, but one *in personam* is bereft of all practical force if the decree *in personam* is conclusive and must be enforced by the courts of the situs" and that such a doctrine would result in practically depriving a state of that exclusive control over its real estate which has always been accorded. Justice Garrison concurred upon the ground that the decretal order was only ancillary to the divorce suit and "did not possess any element of a judgment upon the issue submitted to the court of decision, which was whether the marriage between the parties should be dissolved." Justice Van Syckle, in a dissenting opinion said that the N. Y. judgment was conclusive as to the right of the wife to have him execute a mortgage on the New Jersey land, and that since the courts of New

Jersey *would have afforded such rel'.f if the action had been brought in that state*, the judgment imposed an obligation upon the husband which could be enforced in New Jersey by the intervention of a court of equity there. In this connection, however, he says: "The question is whether our court of equity will establish a lien upon the New Jersey land so as to give effect to the New York decree? It may be conceded that the *lex fori* must apply to the remedy to enforce the N. Y. judgment in our courts. Harper *v.* Brink, 4 Zab. 333;
512 Garr *v.* Stryker, 1 Harr. 404; Amour *v.* McMichael, 7 Vr. 92. While we give full faith and credit to the New York judgment, *we cannot be asked to give greater efficacy to a decree for alimony made in New York than we can give to a like decree made in our own courts.* For instance, if the common law prevailed here we would enforce the N. Y. decree for alimony only according to the common law practice, for that would exhaust our powers in that respect. * * * It being competent for our courts to enforce such a decree made in our own courts by establishing it as a lien on lands, we cannot refuse like relief in this case on the extra territorial judgment. Huntington *v.* Attril, 146 U. S. 657; McEonnyle *v.* Cohen, 13 Pet. 312."

It will be seen therefore that neither the opinion of the majority or of the minority of the New Jersey court in Bullock *v.* Bullock would warrant the granting of the relief sought in this case since the appellee is asking the court to give effect to a decree of the Washington court which it would not enforce if it had been rendered in a court of this state, and that if the view expressed by Justice Garrison is correct, as to which we express no opinion, the decree adjudging the land to Mrs. Fall is only of the nature of a decretal order, ancillary to the subject matter of the suit, which was the matrimonial status, and is not such a judgment as is entitled to full faith and credit under the constitution and laws of the United States. From a consideration of these authorities and upon principle, it seems clear that a decree of a court of Chancery in a foreign state acting upon a person within its jurisdiction and directing him to make a conveyance of lands in this state in no wise affects the title to the land. The decree and order acts only upon the person, and if obedience to its mandate is refused it can only be enforced by the means which have from time immemorial been the weapons of a court of Chan-
513 cery. To say that the decree binds the conscience of the party so that persons to whom he may convey the land thereafter take no title is the same as saying that the decree affects the title, which is beyond the power of the courts of another state to do. The transfer and devolution of title to real estate within the limits of a state is entirely subject to the laws of that state and no interference with it can be permitted by other states. Watts *v.* Waddle, 6 Pet. 389; Davis *v.* Hedley, 22 N. J. Eq. 115; Clarke *v.* Clarke, 186 U. S. 195; Wymer *v.* Wymer, *supra;* Boddle *v.* Jencks, 99 N. W. (S. D.) 98; Manton *v.* Sieberling, 107 Ia., 534; 78 N. W. 194. The law will not permit that to be done indirectly which cannot be done directly, and if the courts of other states can so adjudicate the rights of parties to land in this state that a title apparently clear upon the

official records could be made null and void by its action "upon the conscience" of the holder of the legal title, the recording acts of this state would cease to afford protection to purchasers of land, and thus the title in fact be affected and the power of the state over the transfer and devolution of lands interfered with.

If the Washington decree bound the conscience of E. W. Fall so that when he left the jurisdiction of that state any deed that he might make would be absolutely void, and had he sold the land to an innocent purchaser who had inspected the records and found that he was the owner in fee of an undivided one half interest to the premises, such purchaser, though relying on the laws of this state for his protection, would receive no title. This is the contention of the appellee carried to its ultimate conclusion, and if this is correct the action of the court of another state directly interferes with the operation of the laws of this state over lands within its sovereignty.

514 Under the laws of this state the courts have no power or jurisdiction in a divorce proceeding, except as derived from the Statute providing for such actions, and in such an action have no power or jurisdiction to divide or apportion the real estate of the parties. Nygren *v.* Nygren, 42 Neb., 498; Brotherton *v.* Brotherton N. W. 311. In the Cizek, 99 N. W. 28; Aldrich *v.* Steen, 100 N. W. 311. In the Cizek case, Cizek brought an action for divorce and his wife filed a cross bill and asked for alimony. The court dismissed the husband's bill, found in favor of the wife and by stipulation of the parties set off to the wife the homestead and ordered her to execute to the husband a mortgage thereon, thus endeavoring to make an equitable division of the property. Afterwards in a contest arising between the parties as to the right of possession of the property, the decree was pleaded as a source of title in the wife, but it was held that that portion of the decree which set off the homestead to the wife was absolutely void and subject to collateral attack, for the reason that no jurisdiction was given to the district court in a divorce proceeding to award the husband's real estate to the wife in fee as alimony. The courts of this state in divorce proceedings must look for their authority to the statute and so far as they attempt to act in excess of the powers therein granted their action is void and subject to collateral attack. A judgment or decree of the nature of the Washington decree, so far as affects the real estate, if rendered by the courts of this state would be void. Is it our duty to give effect to this decree under the full faith and credit clause of the constitution of the United States? "These provisions of the constitution and laws of the United States are necessarily to be read in the light of some established principle which they were not intended to overthrow. They give no effect to the judgments of a court which had no jurisdiction of the sub-

515 ject matter or of the parties and have conferred no new jurisdiction on the courts of any state * * * nor do these provisions put the judgments of other states upon the footing of domestic judgments to be enforced by execution, but they leave the manner in which they may be enforced to the law of the state in which they are sued on, pleaded or offered in evidence." Huning-

ton *v.* Attrill, 13 Sup. Ct. Rep. 224. The provision of the constitution establishes a rule of evidence rather than of jurisdiction. Weaver *v.* Cressman, 21 Neb., 675; Hanley *v.* O'Donoghue, 116 U. S. 1, 6 Sup. Ct. Rep., 242; Wisconsin *v.* Pelican Ins. Co., 127 U. S. 265, 8 Sup. Ct. Rep. 1370. We know of no rule which compels us to give to a decree of the courts of Washington a force and effect we would deny to a decree of our own courts upon the same cause of action. We must accord full faith and credit to the divorce decree since the Washington court had jurisdiction to render it, but we are not compelled to recognize a decree affecting the title of E. W. Fall and his grantees in an action where he is not in court by personal service, and where the act directed by the Washington court is in opposition to the public policy of this state, in relation to the enforcement of the duty of marital support. Anglo Am. Packing Co. *v.* Davis, 24 Sup Ct. Rep. 92; Wisconsin *v.* Pelican Ins. Co. *supra;* Lynde *v.* Lynde, 21 Sup. Ct. Rep. 555; M'Elmoyle *v.* Cohan, 13 Pet. 312; Bullock *v.* Bullock, 51 N. J. Eq., 444; Andrews *v.* Andrews, 188 U. S. 14, 23 Sup. Ct. Rep. 237. In order to vest Mrs. Fall with any right, title or interest in and to her husband's land in Nebraska by virtue of the Washington decree, it was absolutely necessary that the decree be carried into effect by that court by compelling a conveyance from her husband. Neither the decree nor the commissioner's deed conferred any right or title upon her. The decree is inoperative to affect the title to the Nebraska land and is
516 given no binding force or effect so far as the courts of this state are concerned, by the provisions of the constitution of the United States with reference to full faith and credit. Since the decree upon which the plaintiff bases her right to recover did not affect the title to the land it remained in E. W. Fall until divested by operation of law or by his voluntary act. He has parted with it to Elizabeth Eastin and whether any consideration was ever paid for it or not is immaterial so far as the plaintiff is concerned, for she is in no position to question the transaction whatever a creditor of Fall might be able to do.

In whatever manner the result of our conclusion may affect the parties to this controversy, it is our duty to sustain the rights of the state to sovereignty over the land within its borders, and to resist an attempt to convey and set apart real estate in Nebraska by the court of another state, when not acting upon and through the person of the owner when under its jurisdiction and by virtue of the proper powers of a court of Chancery.

It appears that Mrs. Fall has paid taxes and interest and made other outlays for the benefit of the property for which she should be reimbursed. The former judgment of this court is vacated and the cause reversed and remanded to the district court with directions to proceed in accordance with this opinion, and if plaintiff so desires, to take an accounting of the rents and profits and disbursements and to render such decree as may be equitable.

517 SEDGWICK, *C. J.*, dissenting:

The fundamental question in this case, the question upon which all others depend, is whether by the law of this state a wife has an equity in the land of her husband during coverture? This question is briefly disposed of in the former opinion — Neb., — 105 N. W. 412, and it is there considered that she has such equity. The meaning of the court however, as expressed in the former opinion upon this point, has been substantially overlooked or entirely misunderstood. It is therefore thought advisable to discuss the question more at large. In this state the amount given to the wife in a decree of divorce is generally called alimony. This term is derived from a latin word which primarily meant to nourish, that is to supply the necessities of life. It was introduced into divorce proceedings by the early ecclesiastical courts of England, and in the early practice of those courts it was defined to be "that support which the husband, on separation, is bound to provide for the wife, and is measured by the wants of the wife and the circumstances and the ability of the husband to pay." After stating this definition the supreme court of Illinois in Cole *v.* Cole, 142 Ill., 19, proceeded as follows:

"The duty of the husband to support and maintain the wife in a manner befitting his condition and circumstances in life still continues; but the foregoing definition may fall far short of what is termed alimony in our statute, and indeed in all those jurisdictions where divorces are granted *a vinculo matrimonii*. It will require no discussion or citation of authority to establish that the husband owes the wife, who by his fault has been driven to seek permanent separation, not only reasonable support and maintenance, but also that she shall be put in no worse condition by reason of the marriage, the dissolution of which has been caused by his wilful misconduct. Equity and good conscience require that the husband shall not profit by his own wrong, and that restitution shall be made to the wife of the property which she brought to the husband, or a suitable sum in lieu thereof be allowed out of his estate, so far as may be done consistently with the preservation of the rights of each, and also that a fair division shall be made, taking into
518 consideration the relative wants, circumstances, and necessities of each, of the property accumulated by their joint efforts and savings. The policy of the law should be, and is, to do justice, and to give to the injured wife not merely what necessity but what justice demands."

Alimony in its primary sense may be allowed the wife although neither party has any property whatever. If the husband is competent to earn a living for himself and wife he is by the fact of his marriage required by our law to furnish such support to the wife, and again if upon the consummation of the marriage there is a separation, and the wife neither brought any property to the husband nor contributed in any manner towards the accumulation of property, still the husband is bound to furnish suitable support for the wife. Under such circumstances as these the term alimony is used in its original meaning and signification. In the progress and

development of our law governing the domestic relations the word alimony has come to be used with a far different meaning. When the property that the wife had at the time of her marriage is combined with the property of her husband and accumulations are afterwards added, or when neither had property at the time of the marriage and by their united efforts and economies property is accumulated, to say that because the title to that property is taken in the name of one party, the other party has no equitable rights therein, would be a monstrous perversion of modern ideas of justice and equity. In the case just cited, the Illinois court said:

"The husband and wife are placed upon an equal footing in respect to the interest each may have in the estate and property of the other, and husband and wife may contract with each other, and she with strangers, as if she were sole. In case of divorce the courts look at the standing of the parties, the conduct of each, and from whence the estate is derived, and, having due regard to the living of each, will make such allowance to the wife as is reasonable and just. * * * And the same is undoubtedly true where the property has been accumulated by the joint effort and economy of the husband and wife, and the allowance has been made to her upon the basis of a reasonable and equitable division of the es-
519 tate. It may be true that the husband, in such cases, has been the apparently efficient means of its accumulation; yet if she has performed her duties as his wife faithfully, giving him her life, her care, strength, and prudent management, it can no more be said that the estate is the result of his labor than it is of her labor. * * * For aught that appears in this petition the entire property of the petitioner may have come from the wife, or been the result of their joint earnings and accumulations, and the court, in making the allowance, may have been making simple restitution, either for property brought to the husband or for assistance in its accumulation."

It has frequently been held by this court that in the allowance of permanent alimony the court should consider whether the wife contributed anything to the common fund. Zimmerman *v.* Zimmerman, 59 Neb., 80. If she is entitled only to support and maintenance the amount would depend upon her necessities and upon her husband's ability. If the amount that she has contributed towards the accumulation of the property is to be taken into consideration, it is because she has an equitable interest in the property which they together have earned and paid for. Our statute provides a method for enforcing this right of the wife in the property which is in the name of her husband. The court must ascertain from the evidence what amount she has contributed towards it, either in property or by her individual efforts, and must decree that amount in her favor. This decree at once becomes a lien upon the property. The husband cannot after this decree is entered convey the property so as to avoid payment according to its terms. He cannot convey the property before the decree and while they are living together as husband and wife with the purpose and effect of defrauding the wife of her interest in the property. Roehl *v.* Roehl,

20 Neb., 55. In that case the conveyance was made long before the decree of divorce and alimony. It could not therefore be held to have been made to defraud creditors. The wife was not a creditor of the husband at the time the conveyance was made. The
520 conveyance was set aside because it was in fraud of the wife's equitable interest in the property which arose from the marital relations. Our statute provides that the remedy which it specifically gives the wife to enforce her interests in the husband's property shall not be exclusive.

By Chapter 40 of the Laws of 1883, it was enacted:

"SEC. 1. All judgments and orders for payment of alimony or of maintenance in actions of divorce or maintenance shall be liens upon property in like manner as in other actions, and may in the same manner be enforced and collected by execution and proceedings in aid thereof, or other action or process as other judgments.

SEC. 2. The remedy given by this act shall be held to be cumulative and in no respect to take away or abridge any subsisting remedy or power of the court for the enforcement of such judgments and orders. Provided, Nothing in this act shall affect the title to any *bona fide* purchaser for value holding by reason of such *bona fide* purchase at the date of its passage."

There are no exemptions under this statute. All property that stands in the name of the husband is absolutely liable to the full extent of any interest that the husband may have at the time of the decree, and by Chapter 41, enacted in the same year, it is provided that:

"In all cases where alimony or other allowance shall be decreed for the wife or for the children, the court may require sufficient security to be given by the husband for the payment thereof, according to the terms of the decree."

and it is further provided that if security is not given a receiver shall be appointed to take charge of both real and personal property, and the provisions of the first section of Chapter 40, which was approved on the preceding day, are re-enacted.

A judgment in favor of the wife, to be determined by a consideration of the amount which she has contributed towards accumulation of the common property of the family, has no other basis or foundation than her equitable rights in the property which she has so helped to accumulate. Unless she has an equity in such property to be in some manner enforced, such judgment is wholly arbitrary and unsupported. It is not based upon contract. It is
521 not compensation for wrongs which she has suffered. It is because our statute has provided for the enforcement of this right by judgment and lien and execution and receivership and compulsory security, if necessary, and because it expressly provides that the court in an action for divorce may transfer the title of personal property from the husband to the wife, that this court has established the doctrine that this remedy, as so provided, is exclusive, and that the court cannot directly transfer the legal title in land from the husband to the wife to satisfy her equities in the land. Whether this conclusion of the court was just or is necessary, we are

not required now to consider, but it is manifest from the provision of the statute and from the decisions of the court, that this construction of the statute relates only to the remedy and not in any respect to the fundamental rights of the wife. Without doubt the law of Nebraska recognizes the equitable right of the wife in the property which she brought to the family at the time of her marriage, or to the accumulation of which she has contributed. It will be remembered that in this case the trial court found that at the time this husband and wife came to Nebraska they were without means, that this land in controversy was purchased and paid for by their joint efforts and contribution. Afterwards and after they had owned this land for sometime, they removed to the state of Washington. The marriage status was within the jurisdiction of the Washington court. When they removed from Nebraska they had as husband and wife mutual equities in this land in question. These equities were personal rights and went with their persons to the state of Washington. The courts of the state of Washington therefore had jurisdiction both of the marriage status and of the equities existing between the parties in this land.

2. It is said that it is against the public policy of this state
522 to transfer the lands of the husband directly to the wife in a divorce proceeding. Courts have been accused of appealing to public policy in justification of acts or omissions on their part which could not in fact be justified. Can public policy be interested in forms of procedure? Is there any principle of morality or public policy involved in determining what instrumentalities shall be used to give a wife her equitable share of the common property? When a divorce is granted her, the public policy of this state is to consider what property she brought to the family, and how much her individual efforts, her care, prudence and economy have contributed to the accumulation of the property, whether that property at the time of their separation is held in her name or in the name of her husband, or in both their names jointly. When those rights and equities of the wife are determined, the policy of our law is to see that she gets her equitable share of the property. There is no charm of public policy in the method by which it is brought about. When the husband and wife go to another state, and there make their home, their rights and equities go with them, though their property is left here. The relations between them are no less intimate, and their equitable rights in the joint property are no less palpable and certain than are those of ordinary business co-partners, and when the marital partnership between them is terminated, the public policy of this state, and of all other civilized states, demands that the court that dissolves that relation should adjust their property rights, and determine what the wife is entitled to out of their joint property. In Washington the court does this by directly determining the just and equitable interest that each has in the joint property, and not by the circuitous process of a judgment, lien and sale; a procedure which we have introduced by a doubtful construction of our statutes, but which is supposed to bring about the
523 same results. No court would hesitate to hold that in a judgment of dissolution of ordinary partnerships, the court should

determine the rights of the several partners in the joint property, and that, if the court has jurisdiction of the persons of the partners, its judgment fixing their equities may be used as a basis of right wherever the property may be situated. It is not doubted that so far as the marriage status is concerned, and the equitable rights of the parties properly before the court, the judgment of the court thereon would be final and binding everywhere.

If the husband had agreed to sell and convey this property to the wife, and she had paid him therefor, and he had still retained the legal title, and their equities uner this contract had been submitted to the court by proper pleadings and evidence in the divorce case, a question of the proper joinder of causes of action might possibly have arisen, but there would have been no question of the jurisdiction of the court over either cause of action. Whether they could be determined together would be a mere question of practice in which no other court would be interested. If the trial court upon such an issue had determined that the wife had fully paid for the land, and was in equity the owner thereof, that determination would be binding everywhere, and while it would not operate directly upon the land, and would not change the legal title, still the husband could never be heard to deny in any court that the wife had paid him in full for the land and was in equity and common justice the owner thereof. In this case she has paid him for the land by becoming his wife, and by contributing to the accumulation of a common property of which he has had his full equitable part. He has agreed to convey it to her because the law implies that agreement from his marriage and separation from her under the circumstances. The
524 equities so arising are as strong and as capable of litigation and adjudication as are the equities created by a written contract of partnership, or a contract of purchase and sale of land. Such equities may be adjudicated by any court of general equity jurisdiction when the parties and the conditions or relations out of which they arise are properly before the court. Under our statute these equities of the wife are valued, and by decree and lien are taken from the property in the husband's name.

3. Another important feature of the case and which is also a matter of preliminary character appears to have been misunderstood. Much is said in the briefs in regard to an action to quiet title and the rule of law that a party to maintain an action to quiet title must have some title to quiet. Authorities are cited upon this proposition and the discussion is gone into much at large, and so the real question presented here is overlooked. The plaintiff in her petition sets out her marriage, and residence in Nebraska, the acquisition of this property when they resided in Nebraska, her contributions to the accumulation of the property, the fact of their removal to the state of Washington and becoming residents of that state, the divorce proceedings there, and the fact that the equities of the respective parties in the land where by both parties submitted to the court and the trial and judgment there, and other matters tending to support her right, and then asks that equity may be done her. She also asks that her title be quieted. This then is an action in equity by the plaintiff

to have her interest, her right, by equity in the land determined, adjudicated and quieted. To say that she cannot maintain an action to fix her interest in the land and to establish her title thereto because she has no title appears to be an attempt at mockery. She alleges facts which she claims entitle her to an interest in the
525 land and to relief at the hands of the courts of Nebraska, and the question is whether these facts entitle her to any relief.

4. Another matter that has confused the argument in this case is the indefinite use of the word title. It is shown in 8 Words & Phrases, 6979, that this word is used in connection with property in some thirty odd different shades of meaning, and it is said by the supreme court of Illinois in Irving *v.* Brownell, 11 Ill. 402-415, that:

"There are perfect titles and apparent or imperfect titles. Even a naked possession constitutes a species of title, though it may be the lowest degree. The meaning of the word is, therefore, to be ascertained from the connection in which it is used."

It is sometimes and perhaps quite commonly used in the signification of a regular chain of transfer from or under the sovereignty of the soil. It is sometimes used in the sense of the particular conveyance under which a man holds his property. In either of these senses of the word the courts of one state cannot in any manner affect the title to lands of another. But the word title in connection with interests in land has been carelessly used in various opinions of courts, as well as in the opinion now promulgated in this case. For instance the note of Judge Freeman to Newton *v.* Bronson, 67 Am. Dec. 89, is cited, and an extensive quotation is made therefrom, which ends with the following words:

"The decree of chancery, then, with respect to realty beyond its jurisdiction, can have no direct operation upon the property, and *per se* in no way affect the legal or equitable title thereto."

A subsequent sentence in the same paragraph of the note is not quoted. It is as follows:

"Still a decree concerning a conveyance is not without its effect *per se*. Thus a decree directing a conveyance may be pleaded as a cause of action or defense in the courts of the state where
526 the land is situated, and it is entitled in such a court to the force and effect of record evidence of the equities therein determined, unless it be impeached for fraud."

If this statement had also been quoted it would have been necessary to have considered what was meant by the words "equitable title" in the first quotation. It may be that the words were not used by the learned author with entire accuracy, but he certainly did not mean thereby "equitable right to any interest in the land." Of course in an action, whether at law or in equity, the decree of the court of another state cannot be considered to create a title to lands in this state. No one with such a decree can maintain a possessory action thereon; but with such a decree he can say to his opponent you will not be allowed to dispute the facts that are established by this decree. The distinction is analogous to that which is made in the application of the law of *res adjudicata*. A judgment

in an action of forcible entry and detainer whether obtained before a justice of the peace or upon appeal to a court of general jurisdiction is not a bar to any other action between the same parties in regard to the same land. But any controversy of fact which was properly in issue before the justice and within his jurisdiction and contested by the parties and determined by the judgment of the justice is settled by his judgment, and that question of fact so settled cannot afterwards be disputed by either of those parties in litigation concerning the same land. And so in determining the effect of a judgment of courts of a sister state in controversies in regard to real estate in this state, it is uniformly held that such judgment cannot be relied upon as title, that it does not affect the title nor in any way act directly upon the land. But questions of fact that were in litigation before the foreign court, and were within the jurisdiction of that court to determine, and were settled
527 by the judgment of the court ought not again to be litigated by the parties, and either party may rely upon such adjudication as finally settling such questions of fact. If in such litigation in the sister state it was alleged and proved that by virtue of an existing contract between the parties there was a controversy as to their equitable rights in real estate situated within this state, or if it was alleged and proved that by reason of fraudulent practices on the part of one of the parties equities existed in the other in real estate in this state and the issues so presented were tried and determined, we are required by the comity which exists between the states, as well as by the express provisions of the federal law, to give full faith and credit to such determination. In this case the wife had an equity in this land, because she had assisted her husband to accumulate the means with which it was paid for, and because he by his treatment of her made their separation and the separation of their rights and equities necessary. These questions were submitted to, and determined by the Washington court.

It is said that "not a single case" has been found in which the direct question at issue was whether a decree "affecting the title to real estate lying in another state will be recognized in the state in which the land lies where no conveyance has been made in obedience to the decree and where the title has been conveyed to third parties." This appears to overlook the question presented here. No court of England or America has held that the decree of the courts of one state can affect the legal title or "chain of title"—that is the title as the word is commonly used of lands in another state. It is always held that only the courts of the state where the land lies
528 can adjudicate land titles. If this were not so the plaintiff might record a copy of her decree and complete her title thereby. Neither has any court held that the decree of a court of another state would affect the rights of third parties, who were innocent purchasers of the land. When, however, issues are presented to a court of competent jurisdiction, and the court having jurisdiction of the parties and of the issues so presented determine such issues, and the equitable rights of the parties in lands in another state depend upon the facts so determined, that determination

of the equities of the parties may be relied upon in any litigation that may arise between the same parties, and full faith and credit must be given to such adjudication of the rights of the parties. In any event third parties who purchase from the apparent owner are not affected by outstanding equities in the land. In this respect it will make no difference whether or not those equities have been adjudicated. If the purchaser is charged with actual or constructive notice of those equities at the time of his purchase he takes the land subject to those equities whatever they may be, whether adjudicated or not. In the former opinion it was pointed out that the defendant who claims through Mr. Fall had constructive notice of Mrs. Fall's equities in the land. The land was occupied by a tenant who recognized Mrs. Fall as his landlord and attorned to her to the exclusion of all other claims to the land. This was notice to a subsequent purchaser. These facts appear to fully answer the statement that "To say that the decree binds the conscience of the party so that persons to whom he may convey the land thereafter take no title is the same as saying that the decree affects the title." The determination of the Washington court upon the facts there in issue so far binds the conscience of the parties that third parties who know that the conscience of the parties is so bound ought not to buy the land and pay the purchase price to the wrong person. It is
529 conceded that the Washington court might have compelled obedience to its decree. It might have by imprisonment enforced the execution of a deed, but it is said "The decree and order acts only upon the person and if obedience to its mandate is refused it can only be enforced by the means which have from time immemorial been the weapons of a court of Chancery." Again the authorities from which this thought is derived have been misunderstood, as it appears to me. The court which enters the decree can only enforce it by acting upon the person, and that is all of the meaning of these authorities. The decree is binding upon the conscience of the parties. In what sense is it binding upon the conscience? Would the conscience be released from obligations of this decree as soon as they crossed the state line? If their consciences are affected and bound by the decree, it would seem that they would be so bound until they complied with the decree. If litigants come before the courts of equity of this state and concede that they are in conscience bound to acknowledge the rights and interest of their adversary in the matter in dispute, what is the duty of the court of equity? It is for no other purpose that courts of equity are established. It is to compel litigants to do what they are in conscience bound to do. And so here, if Mr. Fall is in conscience bound to transfer the legal title of this land to Mrs. Fall and if his grantees knew when they took their title from him that he was in conscience bound so to do, and these parties are before a court of equity in this state, the power and duty of the court are clear. I do not understand the application of the following language: "If the Washington decree bound the conscience of E. W. Fall so that when he left the jurisdiction of that state any deed that he might make would be absolutely void, and had he sold the land to an innocent pur-

chaser who had inspected the records and found that he was
530 the owner in fee of an undivided one half interest to the
premises, such purchaser, though relying on the laws of this state for his protection, would receive no title. This is the contention of the appellee carried to its ultimate conclusion." We have already shown that there is no such question in this case. If Mr. Fall had been bound by contract or in any other way to recognize the equities of Mrs. Fall in this land, it would not be true that "any deed that he might make would be absolutely void." The binding force of such contract upon his conscience would be no greater and no less than the decree in question. It establishes beyond further controversy that there are existing facts by virtue of which Mrs. Fall is in equity entitled to this land. In order to preserve these equities it was her duty to act at once as soon as she knew there was danger that Mr. Fall would attempt to sell the land to an innocent purchaser. This she did by taking notorious possession of the land and commencing her action in the courts of this state to establish her rights in the land. If there are innocent purchasers of the land their rights should of course be protected, and it seems strange that it should be supposed that there is doubt upon that proposition.

The case of Bullock *v.* Bullock, 52 N. J. Eq. 561, was somewhat discussed in the former opinion. In addition to what was there said it may be suggested that the question there in controversy was whether the New York decree dealt with equities in the land. The New York court first entered a judgment against the defendant and then directed that the judgment should be secured by transferring the title of the land in New Jersey by way of mortgage to the plaintiff as security for her judgment. It attempted to act directly upon her title to the land, and while some of the judges thought it ought to be construed as a determination that she had an equity
in the land, the majority of the court thought otherwise,
531 holding that the decree did not purport to establish an equity
in the land but only to require the defendant to transfer the title as security, and as the courts of New York cannot operate directly upon titles to lands in New Jersey it was held that the decree was inoperative. If the New Jersey court had been convinced that the question before the New York court was whether or not the plaintiff had some equity in the New Jersey land, and that the New York court had decided that by virute of their former relations and transactions between them there were existing equities in the land in favor of the plaintiff, there can be no doubt from the various opinions filed in the case that all of the judges would have agreed that such decree would be binding upon the conscience of the parties and would everywhere estop them to deny the existing equities of the plaintiff.

It is said in the opinion that:

"If Fall had obeyed the order of the Washington court and made a deed of conveyance to his wife of the Nebraska land, even under the threat of contempt proceedings, or after duress by imprisonment, the title thereby conveyed to Mrs. Fall would have been of equal

weight and dignity with that which he himself possessed at the time of the execution of the deed."

The validity of such a conveyance to transfer the land would depend upon the same considerations that would determine the validity of the decree itself to fix the equities in the land in such manner as to be binding upon courts of other states.

If the Washington court had no jurisdiction of the equities of the parties, a deed procured by threats of contempt proceedings under the decree of the Washington court, and by imprisonment, would have no more validity in this state than would any other deed procured by duress and threats. But, if on the other hand, the Washington court had jurisdiction of the equities of the parties and the question of those equities was properly presented, the decree of that court thereon would be a sufficient basis for
532 contempt proceedings in that court to compel the execution of a deed, and for the same reason and to the same extent, it would be a sufficient basis in litigation in all other courts to estop the defendant to deny the equitable rights of the plaintiff so fixed. It is a general rule with courts of equity that they will not assume jurisdiction unless the circumstances are such that they can enforce their decree, and so unless the party is before the court so that he can be compelled by its process to perform the decree, a court of equity will not assume jurisdiction of the equities of the parties in land situated in another state. This principal has been construed in the opinion to mean that in case the court, believing that it can enforce its decree, assumes jurisdiction, tries the issue and enters the decree, that decree will be of no force as settling the equities of the parties if the party can evade the process of the court so that the same court cannot compel a conveyance. Such reasoning, it seems to me, calls for no discussion.

The following language is quoted in the opinion from the supreme court of Virginia in Wymer *v.* Wymer, 82 Va., 890:

"But as to these cases it must be borne in mind that the decrees of the foreign court do not directly affect the land but operate upon the person of the defendant and compel him to execute the conveyance and it is the conveyance which has the effect and not the decree."

Why does not this court and all other courts use the word directly in this statement of the law? If the decrees of the foreign court do not in any way affect rights in the land, the expression would be much more simple and emphatic if the word directly were omitted. That case was an action in partition, and language of Judge Storey is also quoted in the majority opinion in regard to the jurisdiction of the court in one state to partition lands in another state, and it seems to be thought that such authorities have a bearing
533 upon the question presented here. An action in partition is an action in regard to the legal title. An equitable right to land will not support an action in partition at all. Both parties must have the legal title in common, and when they do so hold the legal title, either has the right to have that title severed and the land divided. If the parties have equitable rights in the land, these must be settled and adjudicated in another action before partition

can be had. Equitable rights are personal rights and may be adjudicated where the parties are, but the legal title can only be severed and the land apportioned where the land is. This is a sufficient reason for holding that the courts of one state cannot partition the title to lands in another state. The decrees of a foreign court cannot directly affect the land, but as is everywhere determined, and as is said by Mr. Justice Brewer in Dull *v.* Blackman, 169 U. S. 243, cited in the former opinion:

"If all the parties interested in the land were brought personally before a court of another state its decree, establishing their equities in the land, would be conclusive upon them, and thus in effect determine the title."

This is the statement of a principle so commonly known and so generally determined by the courts that it called for no discussion by the learned judge who used it, and yet this statement of the law and the statement of the same court in Cheever *v.* Wilson, 9 Wall. 108 are spoken of in the opinion as dicta merely and are lightly turned aside as of no importance.

The case of Cizek *v.* Cizek, — Neb., — 99 N. W. 28, is cited as authority in the case at bar. In the first opinion of this court in that case, written by Mr. Commissioner Pound, it was said that:

"In case the pleadings are sufficient to bring the subject matter before the court, the decree may not be attacked collaterally merely for want of findings."

This proposition is reaffirmed in the last opinion as
534 "sound" but it is considered that the pleadings did not present the issue of an equitable interest of the wife in the real estate in question, and as no such issue was presented by the pleadings it was held that the court was without jurisdiction to determine it. In the case at bar the issue of the wife's equity in the land was presented, and the Washington court had undoubted jurisdiction to determine that issue.

It seems clear that when they lived in Nebraska the wife had an interest in equity in this land; and she did not lose her interest when they removed to Washington. When their separation became necessary from the conduct of her husband, the law both of this state and of Washington required that she be given her rights in the land. These rights were necessarily and properly submitted to the court. The court had jurisdiction to determine these rights and did determine them; this decision was then and still continues to be binding upon the conscience of Mr. Fall so that he cannot anywhere, in any court, be allowed to say that such right does not exist. These rights of Mrs. Fall would not prevent Mr. Fall from conveying the land to an innocent purchaser in good faith who took the conveyance without notice, but a purchaser from Mr. Fall with notice of the rights of Mrs. Fall would take the land subject to those rights, and this would be so whether the rights had been adjudicated or not. Mr. Fall having fraudulently transferred the legal title to another, is not a necessary party to this action; his grantee with notice holding the legal title from him is a necessary party, and the same relief can

be granted to plaintiff as could be granted against Mr. Fall if he still held the title.

The former judgment is right and should be adhered to.

535 And afterwards, towit, on the 12th day of August, 1907 there was filed in the office of the Clerk of said Supreme Court, a certain Motion in the words and figures following, towit:

In the Supreme Court of the State of Nebraska.

SARAH S. FALL, Plaintiff and Appellee,

v.

E. W. FALL and WILLIAM H. FALL, Defendants; and ELIZABETH EASTIN, Defendant and Appellant.

Motion for Leave to File a Motion for Rehearing.

And now comes the plaintiff and appellee, Sarah S. Fall, and asks leave of this court to file a motion for rehearing in the above entitled cause, and attaches said motion for a rehearing hereto and asks that the mandate of this court be stayed until said motion has been passed upon by this court.

SARAH S. FALL,
Plaintiff and Appellee.
By STARK & GROSVENOUR, AND
THOMAS H. MATTERS,
Her Attorneys.

Endorsed: 13737. Fall *v.* Fall. Motion for leave to file motion for rehearing. Supreme Court of Nebraska. Filed Aug. 12, 1907. H. C. Lindsay, Clerk.

536 And afterwards, towit, on the same day, there was filed in the office of the Clerk of said Supreme Court, a certain Motion for Rehearing in the words and figures following, towit:

537 In the Supreme Court of the State of Nebraska.

SARAH S. FALL, Plaintiff and Appellee,

v.

E. W. FALL and WILLIAM H. FALL, Defendants, and ELIZABETH EASTIN, Defendant and Appellee.

Motion for Rehearing.

And now comes the appellee, Sarah S. Fall, and moves the court herein for a rehearing in this case for the following good and sufficient reasons:

1. This court has disregarded the judgment of the Superior Court of King county, Washington, and examined the pleadings and

the evidences upon which the decree of the Superior Court of King County, Washington is based, and has determined for itself the sufficiency of the pleadings and the evidence in that case, and has refused to give said judgment effect, and has thereby failed and refused to give full faith and credit to the judgment and decree of a court of the state of Washington, contrary to the provisions of section I, article 4 of the Constitution of the United States.

2. This court assumes as true that E. W. Fall borrowed $1000.00 from his sister, Elizabeth Eastin, and executed an indemnity mortgage to his brother, the defendant, William H. Fall, when in truth and in fact the evidence and the judgment of the trial court shows that the entire transaction between E. W. Fall, William H. Fall and Elizabeth Eastin was wholly bogus.

And the court further overlooks the fact that the bogus mortgage was not recorded until months after the land was in possession of Sarah S. Fall, a copy of the decree of the Superior Court of King county, Washington recorded in Hamilton county, Nebraska, and the tenant of Mrs. Sarah S. Fall in possession of the land, attorning to her as owner of the land by agreement with W. H. Fall.

3. This court has determined that the Superior court of King county, Washington, upon the pleadings in the suit pending therein, and the evidence taken therein, had the power and jurisdic-
538 tion to render and should have rendered a money judgment which should take into consideration the value of the Nebraska land in fixing the rights of the parties to that suit, thereby in effect deciding that the Superior court of King county, Washington, did not have jurisdiction to render the judgment fixing the rights of the parties to this litigation as the same was rendered, and has thereby failed to give full faith and credit to the judgment and decree of the Superior court of King county, Washington, contrary to the provisions of section I article 4 of the Constitution of the United States.

4. This court assumes that this suit is an action for divorce and alimony, and that the plaintiff and appellee is seeking to have certain lands in this suit set aside to her in such a proceeding, and entirely overlooks the fact that the plaintiff and appellee, Sarah S. Fall, and E. W. Fall, the defendant, a fraudulent grantor of his sister, Elizabeth Eastin, the appellant, both submitted a controversy as to the ownership and title to this land to the court of general jurisdiction in the state of Washington, and that court found that the land had been purchased by the joint earnings of both parties, and that E. W. Fall had been paid by the plaintiff and appellee, Sarah S. Fall, for his share of this property, and directed E. W. Fall to convey this property in controversy to Sarah S. Fall, and with the contract made by the court on the records of Hamilton county, Nebraska, and Sarah S. Fall in possession of the lands under the contract to convey, with notice that she had paid for it, the appellan*d* accepted a bogus deed from E. W. Fall with intention of defrauding the plaintiff and appellee.

5. This court has disregarded the decisions of the supreme court of the United States in Cheever *v.* Wilson, 9 Wall. 108, and Dull *v.*

Blackman, 169 U. S. 243, which is applied to the facts shown by the record in this suit establish and determine the rights of the parties hereto to be as the same were decreed by the Superior court of King county, Washington, and the opinion and the judg-
539 ment of this court therefore fails to give due faith and credit to the judgment and decree of the Superior court of King county, Washington, contrary to the provisions of Section I article 4 of the Constitution of the United States.

6. This court disregards the fact in its reasoning in regard to the case of Lindley *v.* O'Reilley, that if the decree of the Superior court of King county, Washington held the conscience of E. W. Fall and bound him without regard to the *situs* of the property to convey the same to Sarah S. Fall, that this is in law a contract to convey the premises of Sarah S. Fall and the appellee Elizabeth Eastin acquired no interest whatever under the bogus deed accepted by her with intention of defrauding the appellee.

7. This court confounds the law as laid down in Bullock *v.* Bullock, 27 Atl. 424, in a suit to enforce a judgment for alimony in one state, under the laws of another, with the principles of law governing a decree awarding the real estate in controversy to the appellee, and overlooks the law and the fact that E. W. Fall and Sarah S. Fall, without regard to any divorce proceedings, might have submitted to the Superior court of King county, Washington, the question of the ownership of their property and had a decree rendered thereon.

8. The opinion and judgment of the court is based upon an entirely false impression, for it says:

"If the Washington decree bound the conscience of E. W. Fall so that when he left the jurisdiction of that state any deed that he might make, would be absolutely void, and had he sold the land to an innocent purchaser who had inspected the records and found that he was the owner in fee of an undivided one half interest to the premises, such purchaser, though relying on the laws of this state for his protection, would receive no title. This is the contention of the appellee carried to its ultimate conclusion, and if this is correct the action of the court of another state directly interferes with the operation of the laws of this state over lands within its sovereignty."

This is not the contention of the appellee in this case. E. W. Fall did not sell the land to an innocent purchaser, who had inspected the records and found that he was the owner in fee of an undi-
540 vided one half interest in the premises, and said purchaser, relying on the laws of this state for her protection, but the evidence without cavil shows that Elizabeth Eastin never bought this land of her brother, E. W. Fall, does not now claim to be the owner of it, but simply claims that she accepted this deed as security for a loan which we have shown to be a bogus loan, and that at the time W. F. Fall recorded this mortgage said Sarah S. Fall was in possession of the premises under a decree of the Superior court of King county, Washington, which had bound the conscience of E. W. Fall to convey the land to her, the appellee, and also was receiving the

rents and profits of the premises by agreement with W. H. Fall, he knowing that the land had been awarded to Sarah S. Fall by the decree of the Superior court of King county, Washington, and he W. H. Fall, having been a witness in said action in the Superior Court of King county, Washington, on behalf of his brother E. W. Fall and he, W. H. Fall, having been the agent of his brother for the land in controversy, and he W. H. Fall, having surrendered possession of the premises for his brother, E. W. Fall, to Sarah S. Fall's tenant for her, and in her behalf before he recorded his bogus mortgage, and months prior to the time when the appellee in this suit received and recorded the deed.

9. The opinion and judgment of this court disregard the fact that the controversy between the parties E. W. Fall and Sarah S. Fall, has been settled by a decree of the Superior court of King county, Washington, and is not a mere suit pending therein. That said court had the jurisdiction to enter such decree without regard to the action for divorce, but this court erroneously holds that said decree is merely ancillary to the decree of divorce, and has failed and refused to give full faith and credit thereto, and this court has erroneously held that section 1, article 4, of the Constitution of the United States, reading,

"Full Faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state, and Congress may by general laws prescribe the manner in which
541 such acts, records and proceedings shall be proved and the effect thereof."

establishes only a mere rule of evidence and because this court holds that it would not have jurisdiction to render such a decree as was rendered by the Superior court of King county, Washington, that therefore the supreme court of Nebraska is not obliged to give full faith and credit to said decree and thereby violate the provisions of the Constitution of the United States above referred to.

SARAH S. FALL,
By STARK & GROSVENOR AND
THOMAS H. MATTERS,
Her Attorneys.

Endorsed: 13737. Supreme Court, State of Nebraska. Sarah S. Fall *v.* E. W. Fall *et al.* Motion for Rehearing. Supreme Court of Nebraska. Filed Aug. 12, 1907. H. C. Lindsay, Clerk. Thomas H. Matters, Att'y's for Plaintiff.

542 And afterwards, towit, on the 18th day of September, 1907, there was rendered by said Supreme Court and entered of record upon the Journal thereof, a certain Order in the words and figures following, towit:

No. 13737.

SARAH S. FALL, Appellee,
v.
EDMUND WEBSTER FALL ET AL., Appellants.

Appeal from the District Court of Hamilton County.

On request of the appellee herein the Clerk is hereby directed by the Court to withhold the issuance of mandate until further order.

543 And afterwards, towit, on the 19th day of September, 1907, there was rendered by said Supreme Court and entered of record upon the Journal thereof, a certain Order in the words and figures following, towit:

No. 13737.

SARAH S. FALL, Appellee,
v.
EDMUND WEBSTER FALL ET AL., Appellants.

Appeal from the District Court of Hamilton County.

This cause coming on to be heard upon motion of appellee for a rehearing herein, was submitted to the court; upon due consideration whereof, the court doth find no probable error in the former judgment of this court entered herein; it is therefore considered, ordered and adjudged that said motion for rehearing be, and the same hereby is, overruled, and a rehearing herein refused and denied.

544 And afterwards, towit, on the 15th day of October, 1907, the further following proceedings were had in said cause, viz:

No. 13737.

SARAH S. FALL, Plaintiff & Appellee,
vs.
EDMUND W. FALL and WILLIAM H. FALL, Defendants; ELIZABETH EASTIN, Defendant & Appellant.

Now on this day there was presented to the Honorable Samuel H. Sedgwick, Chief Justice of the Supreme Court of Nebraska, in Chambers, a petition for writ of error to the Supreme Court of the United States, a citation directed to Elizabeth Eastin, citing and admonishing her to appear at a Supreme Court of the United States on the 14th day of November, 1907, an assignment of errors and a bond in the sum of $1000.00, which said writ of error is allowed, said citation signed, said assignment of errors filed and said bond approved, ordered filed and made a part of the record herein.

Which said petition for writ of error is in the words and figures following, towit:

545 The Supreme Court of Nebraska.

No. 13737.

SARAH S. FALL, Plaintiff and Appellee,
vs.
EDMUND W. FALL and WILLIAM H. FALL, Defendants; ELIZABETH EASTIN, Defendant and Appellant.

To the Honorable Samuel H. Sedgwick, Chief Justice of the Supreme Court of Nebraska:

The petition of Sarah S. Fall respectfully shows that on the 12th day of July 1907, the supreme court of the state of Nebraska rendered a final judgment against your petitioner in a cause therein pending wherein your petitioner, Sarah S. Fall was appellee and Elizabeth Eastin was appellant, and for costs, and that on the 19th day of September 1907 said supreme court refused to grant your petitioner a rehearing of said cause, all of which will appear by reference to the record of the proceedings therein; that said court is the highest court in said state in which a decision in said suit could be had; and your petitioner feeling aggrieved by the judgment of the supreme court of Nebraska, claims the right to remove said judgment to the Supreme Court of the United States by writ of error under section 709 of the Revised Statutes of the United States for the following errors committed by the supreme court of Nebraska, as shown by the records, to-wit:

I.

Because this court erred in reversing the judgment of the district court of Hamilton county, Nebraska, which was in favor of the plaintiff in error, and in deciding said case upon the issues therein against the plaintiff in error in this to-wit: this suit is an action brought by the plaintiff in error in the district court of Hamilton county, Nebraska to establish her title to the land described in her peti-
546 tion. This suit is based on a judgment and decree of the superior court of King county, Washington in an action between one Edmund W. Fall and Sarah S. Fall, for a divorce and an equitable division of the property of both, in which suit both parties personally appeared and wherein that court adjudicated as between the plaintiff in error and said Edmund W. Fall grantor of the defendant in error, who had full notice of the rights and equities of plaintiff in error in said land, that the plaintiff in error, herein Sarah S. Fall who was defendant in that suit was the owner of the land in the pending controversy and was equitably entitled to a conveyance thereof and ordered said Edmund W. Fall to convey same to the plaintiff in error; and therein and thereby the equities in said land of the plaintiff in error and Edmund W. Fall were fixed and determined.

This court, by its judgment and decision in this case has refused to give full faith and credit to the judgment of the superior court

of King county, Washington, and thereby denied to the plaintiff in error the right, and privilege to which she is entitled under the first section of article four of the Constitution of the United States, which provides: "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State"; because the judgment rendered by said superior court of King county, Washington, would not, under the law and practice of Nebraska, have been rendered in the courts of the State of Nebraska had said suit been instituted, tried and determined in Nebraska.

II.

This court erred in reversing the judgment of the district court of Hamilton county, Nebraska, which was in favor of the plaintiff in error, and in deciding said case upon the issues therein against the plaintiff in error in this to-wit: this suit is an action brought by the plaintiff in error in the district court of Hamilton county, Nebraska, to establish her title to the land described in her petition.
547 This suit is based on a judgment and decree of the superior court of King county, Washington in an action between one Edmund W. Fall and Sarah S. Fall for a divorce and an equitable division of the property of both, in which suit both parties personally appeared and wherein that court adjudicated as between the plaintiff in error and said Edmund W. Fall, grantor of the defendant in error, who had full notice of the rights and equities of plaintiff in error in said land, that the plaintiff in error herein, Sarah S. Fall who was defendant in that suit, was the owner of the land in the pending controversy and was equitably entitled to a conveyance thereof, and ordered said Edmund W. Fall to convey same to the plaintiff in error, and therein and thereby the equities in said land of the plaintiff in error and Edmund W. Fall were fixed and determined.

This court by its judgment and decision in this case has refused to give full faith and credit to the judgment of the superior court of King county, Washington, and thereby denied to the plaintiff in error the right and privilege to which she is entitled under the first section of article four of the Constitution of the United States which provides: "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State"; because the supreme court of Nebraska assumed the right to determine, contrary to law, the fact that the superior court of King county, Washington had no jurisdiction over the parties before it nor of the subject matter involved in said suit to render the judgment and decree which is the basis of the right of the plaintiff in error in this suit.

III.

This court erred in reversing the judgment of the district court of Hamilton county, Nebraska, which was in favor of the plaintiff in error, and in deciding said case upon the issues therein against the plaintiff in error in this to-wit: this suit is an action brought by the plaintiff in error in the district court of Hamilton county, Nebraska

to establish her title to the land described in her petition. This suit is based on a judgment and decree of the superior court of King county, Washington in an action between one Edmund W.
548 Fall and Sarah S. Fall, for a divorce and an equitable division of the property of both in which suit both parties personally appeared and wherein the court adjudicated as between the plaintiff in error and said Edmund W. Fall, grantor of the defendant in error, who had full notice of the rights and equities of plaintiff in error in said land, that the plaintiff in error herein, Sarah S. Fall who was defendant in that suit was the owner of the land in the pending controversy and was equitably entitled to a conveyance thereof, and ordered said Edmund W. Fall to convey same to the plaintiff in error, and therein and thereby the equities in said land of the plaintiff in error and Edmund W. Fall were fixed and determined.

This court, by its judgment and decision in this case has refused to give full faith and credit to the judgment of the superior court of King county, Washington, and thereby denied to the plaintiff in error, the right and privilege to which she is entitled under the first section of article four of the Constitution of the United States, which provides: "Full Faith and Credit shall be given in each State to the Public Acts, Records and judicial Proceedings of every other State"; because the supreme court of Nebraska refused to recognize and accept the judgment and decree of the superior court of King county, Washington, as an adjudication of the rights and the parties to that suit in the property in controversy.

Wherefore, your petitioner says she has been denied her rights under the Constitution and laws of the United States and prays that she may be awarded a writ of error by this Honorable court issuing out of the Supreme Court of the United States, addressed to this Honorable court for the purpose of enabling said Supreme Court of the United States to examine and correct the errors assigned, by the reversal of the judgment of this Honorable court, and for such other and further proceedings as to said Supreme Court of the United States may seem proper.

CHARLES J. GREENE,
RALPH W. BRECKENRIDGE,
THOMAS H. MATTERS,
Attorneys for Sarah S. Fall, Petitioner.

549 Let the writ issue as prayed. Supersedeas is fixed at $1000.00.

October 15, A. D. 1907.

SAMUEL H. SEDGWICK,
Chief Justice of the Supreme Court of Nebraska.

550 [Endorsed:] No. 13,737. Supreme Court of Nebraska. Sarah S. Fall, Plaintiff and Appellee, *vs.* Edmund W. Fall and William H. Fall, Defendants, Elizabeth Eastin, Defendant and Appellant. Petition for writ of error. Supreme Court of Nebraska. Filed Oct. 15, 1907. H. C. Lindsay, clerk.

551 Which said assignment of errors is in the words and figures following, towit:

552 The Supreme Court of the United States.

SARAH S. FALL, Plaintiff in Error,
vs.
ELIZABETH EASTIN, Defendant in Error.

Assignment of Errors.

Comes now Sarah S. Fall, plaintiff in error, by her counsel, and respectfully submits that in the record proceedings, decision and final judgment of the supreme court of Nebraska in the above entitled cause there is manifest error in this, to-wit:

I.

The supreme court of Nebraska erred in reversing the judgment of the district court of Hamilton county, Nebraska, which was in favor of the plaintiff in error, and in deciding said case upon the issues therein against the plaintiff in error in this to-wit: this suit is an action brought by the plaintiff in error in the district court of Hamilton county, Nebraska to establish her title to the land described in her petition. This suit is based on a judgment and decree of the superior court of King county, Washington in an action between one Edmund W. Fall and Sarah S. Fall, for a divorce and an equitable division of the property of both, in which suit both parties personally appeared, and wherein that court adjudicated as between the plaintiff in error and said Edmund W. Fall, grantor of the defendant in error, who had full notice of the rights and equities of plaintiff in error in said land, that the plaintiff in error herein Sarah S. Fall who was defendant in that suit was the owner of the land in the pending controversy and was equitably entitled to a conveyance thereof, and ordered said Edmund W. Fall to convey same to the plaintiff in error; and therein and thereby the equities in said land of the plaintiff in error and Edmund W. Fall were fixed and determined.

The supreme court of Nebraska, by its judgment and decision in this case, has refused to give full faith and credit to the judgment of the superior court of King county, Washington, and thereby denied to the plaintiff in error the right and privilege to which she
553 is entitled under the first section of article four of the Constitution of the United States, which provides: "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State"; because the judgment rendered by said superior court of King county, Washington would not under the law and practice of Nebraska, have been rendered in the courts of the State of Nebraska had said suit been instituted, tried and determined in Nebraska.

II.

The supreme court of Nebraska erred in reversing the judgment of the district court of Hamilton county, Nebraska, which was in favor of the plaintiff in error, and in deciding said case upon the issues therein against the plaintiff in error in this to-wit: this suit is an action brought by the plaintiff in error in the district court of Hamilton county, Nebraska to establish her title to the land described in her petition. This suit is based on a judgment and decree of the superior court of King county, Washington in an action between one Edmund W. Fall and Sarah S. Fall for a divorce and an equitable division of the property of both, in which suit both parties personally appeared, and wherein that court adjudicated as between the plaintiff in error and said Edmund W. Fall grantor of the defendant in error, who had full notice of the rights and equities of plaintiff in error in said land, that the plaintiff in error herein, Sarah S. Fall who was defendant in that suit, was the owner of the land in the pending controversy and was equitably entitled to a conveyance thereof, and ordered said Edmund W. Fall to convey same to the plaintiff in error, and therein and thereby the equities in said land of the plaintiff in error and Edmund W. Fall were fixed and determined.

The supreme court of Nebraska by its judgment and decision in this case, has refused to give full faith and credit to the judgment of the superior court of King county, Washington, and thereby denied to the plaintiff in error the right and privilege to which she
554 is entitled under the first section of article four of the Constitution of the United States, which provides: "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State"; because the supreme court of Nebraska assumed the right to determine contrary to law and the fact that the superior court of King county, Washington, had no jurisdiction over the parties before it nor of the subject matter involved in said suit to render the judgment and decree which is the basis of the right of the plaintiff in error in this suit.

III.

The supreme court of Nebraska erred in reversing the judgment of the district court of Hamilton county, Nebraska, which was in favor of the plaintiff in error, and in deciding said case upon the issues therein against the plaintiff in error in this to-wit this suit is an action brought by the plaintiff in error in the district court of Hamilton county, Nebraska to establish her title to the land described in her petition. This suit is based on a judgment and decree of the superior court of King county, Washington in an action between one Edmund W. Fall and Sarah S. Fall, for a divorce and an equitable division of the property of both, in which suit both parties personally appeared, and wherein the court adjudicated as between the plaintiff in error and said Edmund W. Fall, grantor of the defendant in error, who had full notice of the rights and equities of plaintiff in error in said land, that the plaintiff in error herein Sarah S. Fall who was defendant in that suit was the owner of the

land in the pending controversy and was equitably entitled to a conveyance thereof, and ordered said Edmund W. Fall to convey same to the plaintiff in error; and therein and thereby the equities in said land of the plaintiff in error and Edmund W. Fall were fixed and determined.

The supreme court of Nebraska, by its judgment and decision in this case, has refused to give full faith and credit to the judgment of the superior court of King county, Washington, and
555 thereby denied to the plaintiff in error, the right and privilege to which she is entitled under the first section of article four of the Constitution of the United States, which provides: "Full Faith and Credit shall be given in each State to the Public Acts, Records and judicial Proceedings of every other State"; because the supreme court of Nebraska refused to recognize and accept the judgment and decree of the superior court of King county, Washington, as an adjudication of the rights of the parties to that suit in the property in controversy.

Wherefore, plaintiff in error, Sarah S. Fall, prays that said judgment of the supreme court of Nebraska may be reversed with directions to said supreme court of Nebraska to affirm the judgment rendered in said cause in the district court of Hamilton county, Nebraska.

CHARLES J. GREENE,
RALPH W. BRECKENRIDGE,
Attorneys for Plaintiff in Error.

556 [Endorsed:] No. 13,737. Supreme Court of the United States. Sarah S. Fall, plaintiff in error, *vs.* Elizabeth Eastin, defendant in error. Assignment of errors. Supreme court of Nebraska. Filed Oct. 15, 1907. H. C. Lindsay, clerk.

557 And afterwards, towit, on the 16th day of October, 1907, there was filed in the office of the Clerk of said Supreme Court a certain Bond, which said bond was on said date duly approved, and is in the words and figures following, towit:

Know all men by these presents, That we, Sarah S. Fall, as principal, and J. G. Baechlin of Aurora, Nebraska, and the National Surety Co. of New York, as Sureties, are held and firmly bound to Elizabeth Eastin in the full and just sum of $1,000.00, to be paid to the said Elizabeth Eastin, her heirs, executors, administrators or assigns; to which payment well and truly to be made we bind ourselves, our heirs, our successors, executors and administrators, jointly and severally by these presents.

Signed with our seals and dated this 15th day of October in the year of our Lord, One Thousand Nine Hundred Seven.

Whereas, later at a term of the Supreme Court of Nebraska, in a suit depending in the said court between Elizabeth Eastin, appellant, and Sarah S. Fall, appellee, a judgment was rendered against the said Sarah S. Fall, and the said Sarah S. Fall having obtained a writ of error and filed a copy thereof in the clerk's office in the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Elizabeth Eastin, citing and admonishing her

to be and appear at the Supreme Court of the United States at Washington within thirty days from the date thereof.

Now the condition of the above obligation is such that if Sarah S. Fall shall prosecute said writ to effect and answer all demands and costs, if we fail to make her plea good then the above obligation to be void; else to remain in full force, effect, virtue and law.

SARAH S. FALL,
J. G. BAESCHLIN,
[SEAL.] NATIONAL SURETY COMPANY,
By R. A. LEUSSLER,
Resident Vice President.
C. W. DREW,
Resident Assistant Secretary.

558 The foregoing bond and surety thereon approved by me this 16th day of October, A. D., 1907.

SAMUEL H. SEDGWICK,
Chief Justice.

Endorsed: 13737. Fall *v.* Fall. Bond for Costs. Supreme Court of Nebraska. Filed. Oct. 16, 1907. H. C. Lindsay, Clerk. H. E. Palmer, Son & Co., General Agents. Omaha, Nebr.

559-568 And afterwards, to wit, on the 5th day of November, 1907, there was filed in the office of the Clerk of said Supreme Court, a certain Motion in the words and figures following, towit:

* * * * * * *

569 STATE OF NEBRASKA, *ss:*

I, H. C. Lindsay, Clerk of the Supreme Court of the State of Nebraska, do hereby certify that the foregoing is a true and correct transcript of the record, opinion and final judgment in a cause in said court, wherein Sarah S. Fall was plaintiff and appellee, Edmund W. Fall and William H. Fall were defendants, and Elizabeth Eastin was defendant and appellant, as fully as the same is of record and on file in my office.

I further certify that the annexed Petition for Writ of Error, Writ of Error and Citation are the originals which were lodged in my office, and the whole is now returned in obedience to said writ of error.

I further certify that I have duly retained in my office true and correct copies of said Petition for Writ of Error, Writ of Error and Citation with the endorsements thereon.

In testimony whereof, I have hereunto set my hand and caused to be affixed the seal of said Court, at Lincoln, this 7th day of November, A. D., 1907.

[Seal Supreme Court of Nebraska.]

H. C. LINDSAY, *Clerk.*

Due Clerk for preparing record for Supreme Court of U. S. $100.00. Paid by Greene, Breckenridge & Matters.

159

570 Supreme Court of the United States.

SARAH S. FALL, Plaintiff in Error,
vs.
ELIZABETH EASTIN, Defendant in Error.

Designation by Plaintiff in Error of Parts of Record to be Printed Necessary to the Consideration of Plaintiff in Error's Assignment of Errors.

To the Honorable James H. McKenney, Clerk of the Supreme Court of the United States, Washington, D. C., and to E. J. Hainer and J. H. Smith, attorneys for defendant in error:

The plaintiff in error herein deems as necessary for the consideration of the assignments of error herein, the following portions of the record filed herein, and designates to be printed the following portions of said record:

I.

Writ of error and the return thereto.

II.

Citation and proof of service thereof.

III.

Transcript from the district court of Hamilton county, Nebraska, certified by the clerk of said court and filed in the supreme court of Nebraska on May 12, 1904, in the case entitled Sarah S. Fall *vs.* Edmund Webster Fall, William H. Fall and Elizabeth Eastin. The bill of exceptions filed with said transcript shall not be printed except the following portions thereof, which shall be printed:

IV.

The testimony of Sarah S. Fall on manuscript pages 1 to 11 inclusive, of said bill of exceptions, also, in its proper place in the printed record, manuscript pages 183 to 199 inclusive, also
571 pages 200 to 204 inclusive, and exhibits referred to therein of said bill of exceptions, which was filed May 21, 1904 in the supreme court of Nebraska, in the cause entitled Sarah S. Fall *vs.* Edmund Webster Fall, William H. Fall and Elizabeth Eastin.

V.

Exhibit B., incorporated in said bill of exceptions, consisting of the transcript containing the pleadings, orders of court and decree, and all proceedings in the case of E. W. Fall *vs.* Sarah S. Fall in the superior court of Washington, for King county, except the depositions in said suit filed with said exhibit B., and the interroga-

tories filed therewith and except the affidavits and documents appearing upon pages 23 to 41 inclusive, and except the papers and documents appearing upon manuscript pages 73 and 93 to 104 inclusive, and except pages 112, 113, and 114 of said exhibit B.

VI.

Manuscript pages 16, 16*a*, 16*b*, 16*c*, 16*d*, 16*e*, 16*f*, 16*g*, 16*h*, 16*i*, 16*j*, 16*k*, 17, 18 and 19 of the bill of exceptions, together with exhibit C. and exhibits A, B, C, D, E, and F, thereto attached.

VII.

The testimony of Elizabeth Eastin beginning on manuscript page 114 of said bill of exceptions and ending on page 141 thereof with the redirect examination, and exhibits referred to therein.

VIII.

Supplemental transcript filed in the supreme court of Nebraska April 4, 1905.

IX.

Judgment and opinion of the supreme court of Nebraska filed December 6, 1905.

X.

Motion for rehearing filed January 12, 1906.

XI.

Order allowing the rehearing, made March 22nd,1906.

XII.

Judgment and opinion of the supreme court of Nebraska filed July 12, 1907.

572 XIII.

Motion for leave to file motion for rehearing filed August 12, 1907.

XIV.

Motion for rehearing filed August 12, 1907.

XV.

Order withholding mandate entered September 18, 1907.

XVI.

Order overruling motion for rehearing entered September 19, 1907.

XVII.

Journal entry of the supreme court of Nebraska on presentation of petition for writ of error, and allowance of writ.

XVIII.

Petition for writ of error.

XIX.

Order allowing the writ of error.

XX.

Assignment of errors.

XXI.

Bond on writ of error.

XXII.

Clerk's certificate.

CHARLES J. GREENE,
RALPH W. BRECKENRIDGE,
Attorneys for Plaintiff in Error.

Received a copy of the foregoing designation of parts of record to be printed, this 30th day of November, 1907.

EUGENE J. HAINER,
Attorneys for Defendant in Error.

573 [Endorsed:] 499. 20902. Supreme Court of the United States. Sarah S. Fall, Plaintiff in error, *vs.* Elizabeth Eastin, Defendant in error. Designation by Plaintiff in Error of Parts of Record to be Printed Necessary to the Consideration of Plaintiff in Error's Assignment of Errors.

574 [Endorsed:] File No. 20,902. Supreme Court U. S. October Term, 1907. Term No. 499. Sarah S. Fall, Pl'ff in Error, *vs.* Elizabeth Eastin. Designation by counsel for plaintiff in error of parts of record to be printed & proof of service of same. Filed Dec. 16th, 1907.

Endorsed on cover: File No. 20,902. Nebraska Supreme Court. Term No. 203. Sarah S. Fall, plaintiff in error, *vs.* Elizabeth Eastin. Filed November 12th, 1907. File No. 20,902.

SUPREME COURT OF THE UNITED STATES

No. 203.

SARAH S. FALL,
PLAINTIFF IN ERROR,
v.
ELIZABETH EASTIN,
DEFENDANT IN ERROR.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

CHARLES J. GREENE,
RALPH W. BRECKENRIDGE,
AND THOMAS H. MATTERS,
ATTORNEYS FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

The facts on which the plaintiff in error bases the right denied to her by the supreme court of Nebraska in the opinion and judgment to be reviewed, may be stated in the language of that court. This will foreclose all controversy over the facts and the grounds upon which the Nebraska court rested its judgment.

This is an action to quiet the title to an undivided one-half interest in a certain tract of land in Hamilton county,

and to cancel and annul a certain mortgage and deed executed by the defendant, Edmund W. Fall, to the defendants, W. H. Fall and Elizabeth Eastin. The plaintiff, Sarah S. Fall, bases her right to the relief prayed upon a decree rendered in divorce proceedings in the state of Washington, whereby a court of that state set apart the premises to her as her separate property, and ordered her former husband, E. W. Fall, to convey the same to her.

In 1876 E. W. Fall and Sarah Fall were married in Indiana. They afterwards removed to Hamilton county, Nebraska, and lived in Nebraska until 1889, when they removed to the state of Washington. In 1879, while they lived in Nebraska, E. W. Fall purchased 160 acres of land in Hamilton county, the title to the undivided one-half of which is in controversy. In 1887 he conveyed the farm to Mrs. Fall's brother as an intermediary, who in turn reconveyed to E. W. Fall and Sarah S. Fall, thereby vesting each with an undivided one-half interest in the land.

E. W. Fall began an action for divorce against his wife in February, 1895, in the superior court of King county, Washington, to which she filed an answer and cross-petition. The law of Washington requires parties desiring a divorce to bring into court a list and description of all their property, and empowers the judge of the court, sitting as a chancellor, to make an equitable division of all the property between the parties. See former opinion, 106 N. W., 412. The husband in his petition claimed the Nebraska land as his own property, while the wife asserted the same to be community property, belonging to them both, and asked the court to set it apart to her as her separate property. On October 5th, 1895, by its decree, the Washington court refused a divorce to the husband and granted it to the wife on her cross-petition, and set apart and gave all the Nebraska land to the wife as her sole and separate property, and directed the husband to convey the land to the wife in five days, which he refused and neglected to do. An appeal bond was filed and the cause was taken to the Supreme Court of Washington by Mr. Fall; but on May 15th, 1896, the appeal was dismissed.

Printed record, p. 127; *Fall v. Fall*, 75 Neb., 104, 113 N. W., 175.

The same and other material facts are thus stated by Mr. Justice SEDGWICK in the original opinion of the Nebraska

supreme court, wherein was affirmed the right claimed by the plaintiff in error, which was finally denied her:

This controversy relates to a quarter section of land in Hamilton county. The plaintiff bases her right in the land upon a decree of the superior court of King county, in the state of Washington. In 1876 the plaintiff and Edmund W. Fall intermarried in the state of Indiana. Afterwards they removed to this state and became the owners of the quarter section of land now in controversy. After residing here for some years, they removed to the state of Washington, and being residents there, an action for divorce was begun by the plaintiff's then husband. In this action she answered, denying that any cause for divorce existed against her, and in her cross-petition, she asked that it might be found that she was entitled to a divorce, and that a decree in her favor be rendered accordingly. The court decreed a divorce in her favor and also by this decree gave her the land in dispute herein. Under this decree the plaintiff took possession of the land, in October, 1895, and has ever since been in the actual possession and occupancy of the land. Afterwards, her former husband, Edmund W. Fall, conveyed the land in question to the defendant, Elizabeth Eastin. The plaintiff brought this action, setting out a full statement of the rights which she claimed in the land and the facts which she claimed supported these rights, and prayed, among other things, that her title in the land be quieted, and "for all other proper and equitable relief" . . . . . At the time the divorce proceedings were pending in the state of Washington, and when the decree was rendered therein, the statute of that state provided:

> "In granting a divorce, the court shall also make such disposition of the property of the parties as shall appear just and equitable, having regard to the respective merits of the parties, and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it for the benefit of the children, and shall make provision for the guardianship, custody and support and education of the minor children of such marriage." 2 Stats. & Code Wash., Sec. 2007, par. 771.

* * * * * *

It is clear that the statute in question gives to the court

in divorce proceedings complete equitable jurisdiction over the property of the parties situated within the state. The language is apt and pertinent for that purpose. A court that makes a just and equitable disposition of the property of parties litigant in an action, is a court of equity, and the distribution of the property is, at least in part, the subject matter of the litigation. If indeed there could be any doubt in other jurisdictions as to the intention of the legislature in enacting this law, and the force and effect thereof in conferring equitable powers upon the trial court, that doubt has been resolved by the supreme court of that state. In *Webster v. Webster*, 2 Wash., 417, the court, in construing this statute, said:

> "This statute, however, provides, that when coverture is to be broken, and the marriage relations dissolved, that the parties shall bring into court all their property, and a complete showing must be made. Each party must lay down before the chancellor all that he or she has, and after an examination into the whole case, he makes an equitable division. . . . . We are clearly of the opinion that par. 2007 of the code confers upon the court the power, in its discretion, to make a division of the separate property of the wife or husband."

And indeed, the parties themselves so considered it. The plaintiff in that case set out a description of the land here in Nebraska, with other property owned by the parties, alleged its value, and asked the court to make an equitable disposition of it under this statute, and the plaintiff here, who was the defendant in that action, also in her cross-petition described this land and asked the court to determine the rights of the parties to all the property which they owned, including this land in question. The findings and decree of that court were full and covered all of the issues in the case presented by the pleadings, and adjudged the issues so determined in favor of the defendant in that action, who is the plaintiff here. It may be further observed that in that case it was alleged in her cross-petition by this plaintiff that the parties in that action had, by their joint efforts as husband and wife, accumulated the property which they held, including the land in question here, and the court especially found that that allegation of her cross-petition was true, and that the property which Mr. Fall had already used for his personal benefit, together with that given him by the decree, was

his equitable part of all the property of both parties. The same allegations are embraced in the petition in this case and the trial court found especially that they were true, and that the plaintiff had contributed equally to the accumulation of the property, including this land in dispute.

The findings of fact to the trial court in this case are also quite comprehensive. (p. 111.) These findings were not questioned in the oral argument, nor do the briefs point us to any failure of the evidence to support them. We will therefore in the farther consideration of the case consider these findings as the established facts in the case. (p. 115.)

Among the averments of the petition thus found to be true was that contained in the twenty-fourth paragraph thereof, charging that the deed under which the defendant in error claims was made by E. W. Fall and accepted by his sister, Elizabeth Eastin, "in fraud of the rights of this plaintiff and with intent to cheat and defraud this plaintiff, and with full knowledge and notice of the making and entering of said decree, and with the sole and only purpose of aiding and abetting and assisting the defendant, E. W. Fall, in defeating and evading the execution of said decree." (p. 11.)

Among the other facts found to be true by the trial court is that the plaintiff was, at the time her suit was begun, in the possession and occupancy of the land and that she had had such possession from October 23, 1895. (pp. 11, 111.) The deed under which the defendant claims was made and executed on April 7, 1896.

The decree of the trial court (p. 111) quieted the title to the land in controversy in the plaintiff in error, on the faith and credit of the judgment of the superior court of King county, Washington. The defendant in error appealed to the supreme court of Nebraska, where the decree of the district court of Hamilton county, Nebraska, was affirmed in the opinion written by Mr. Justice SEDGWICK, from which a part of the foregoing statement of facts has been taken. Afterwards, on

rehearing, the supreme court of Nebraska reversed itself and the decree of the district court of Hamilton county, Nebraska, in the opinion which begins on p. 127 of the printed record herein. From that opinion and judgment Mr. Justice SEDGWICK vigorously dissented, and the grounds for his dissent were stated in an opinion found in the printed record on p. 137; in which (see bottom p. 141) reference is made to the facts stated in the petition and the prayer therein contained for equitable relief:

> "She also asks that her title be quieted. This then is an action in equity by the plaintiff, to have her interest, her right, her equity in the land *determined,* adjudicated and quieted. *To say that she cannot maintain an action to fix her interest in the land and to establish her title thereto because she has no title* appears to be an attempt at mockery. She alleges facts which she claims entitle her to an interest in the land and to relief at the hands of the courts of Nebraska, and the question is whether these facts entitle her to any relief."

The majority opinion of the Nebraska supreme court, from which Mr. Justice SEDGWICK dissented, involves the fundamental error that the adjudication of the equities in the land in controversy, which the Washington court decreed in favor of Mrs. Fall, was equivalent to *an attack upon the sovereignty of Nebraska,* which has the supreme control, through its laws and its courts, over the title to lands within its jurisdiction. The Nebraska court likewise based its refusal to recognize the decree of the Washington court upon the ground that it would not give effect to a decree rendered in the courts of another state, which would be denied to a decree of a Nebraska court upon the same cause of action; and this proposition rests upon the fact that the statutes of Nebraska conferring jurisdiction and prescribing the procedure in divorce cases, limit the power

of the Nebraska courts over the real property of the parties to the rendition of a judgment for alimony, to be enforced and collected as other judgments, and do not authorize a decree adjudging the equities of the parties in the community property, such as was made by the superior court of King county, Washington under the laws of that state; and the Nebraska supreme court conceived itself bound "to sustain the rights of the state to sovereignty over the land within its borders," and held that the maintenance of such sovereignty required the disregard in Nebraska of the equities adjudicated in Washington between Mrs. Fall and her former husband, who is a brother of the defendant in error, who acquired her deed to the property after the Washington court had fixed and determined the equities aforesaid and with full notice of the Washington proceedings.

The court overruled the subsequent motion of the plaintiff in error for a further rehearing (pp. 148, 152), and Mrs. Fall, being aggrieved at the denial of her equitable rights, sued out a writ of error to the supreme court of Nebraska, which is "the highest court of law or equity of said state in which a decision could be had in said suit" (1), and makes the following

ASSIGNMENT OF ERRORS.

I.

The supreme court of Nebraska erred in reversing the judgment of the district court of Hamilton county, Nebraska, which was in favor of the plaintiff in error, and in deciding said case upon the issues therein against the plaintiff in error in this, to-wit: this suit is an action brought by the plaintiff in error in the district court of Hamilton county, Nebraska, to establish her title to the land described in her petition. This suit is based on a judgment and decree of the superior court of King county, Washington, in an action between one Edmund W. Fall and Sarah S. Fall, for a divorce and an equitable division of the property of both, in which suit both parties personally appeared and wherein that court adjudicated as between the plaintiff in error and said Edmund W. Fall, grantor of the defendant in error, who had full notice of the rights and equities of plaintiff in error in said land, that the plaintiff in error herein, Sarah S. Fall, who was defendant in that suit, was the owner of the land in the pending controversy and was equitably entitled to a conveyance thereof, and ordered said Edmund W. Fall to convey same to the plaintiff in error; and therein and thereby the equities in said land of the plaintiff in error and Edmund W. Fall were fixed and determined.

The supreme court of Nebraska, by its judgment and decision in this case, has refused to give full faith and credit to the judgment of the superior court of King county, Washington, and thereby denied to the plaintiff in error the right and privilege to which she is entitled under the first section of article four of the Constitution of the United States, which provides: "Full faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State"; because the judgment rendered by said superior

court of King county, Washington, would not under the law and practice of Nebraska, have been rendered in the courts of the State of Nebraska had said suit been instituted, tried and determined in Nebraska.

II.

The supreme court of Nebraska erred in reversing the judgment of the district court of Hamilton County, Nebraska, which was in favor of the plaintiff in error, and in deciding said case upon the issues therein against the plaintiff in error in this, to-wit: this suit is an action brought by the plaintiff in error in the district court of Hamilton county, Nebraska, to establish her title to the land described in her petition. This suit is based on a judgment and decree of the superior court of King county, Washington, in an action between one Edmund W. Fall and Sarah S. Fall for a divorce and an equitable division of the property of both, in which suit both parties personally appeared, and wherein that court adjudicated as between the plaintiff in error and said Edmund W. Fall, grantor of the defendant in error, who had full notice of the rights and equities of plaintiff in error in said land, that the plaintiff in error herein, Sarah S. Fall, who was defendant in that suit, was the owner of the land in the pending controversy and was equitably entitled to a conveyance thereof, and ordered said Edmund W. Fall to convey same to the plaintiff in error, and therein and thereby the equities in said land of the plaintiff in error and Edmund W. Fall were fixed and determined.

The supreme court of Nebraska by its judgment and decision in this case, has refused to give full faith and credit to the judgment of the superior court of King county, Washington, and thereby denied to the plaintiff in error the right and privilege to which she is entitled under the first section of article four of the Constitution of the United States, which pro-

vides: "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State"; because the supreme court of Nebraska assumed the right to determine, contrary to law and the fact, that the superior court of King county, Washington, had no jurisdiction over the parties before it nor of the subject matter involved in said suit to render the judgment and decree which is the basis of the right of the plaintiff in error in this suit.

III.

The supreme court of Nebraska erred in reversing the judgment of the district court of Hamilton county, Nebraska, which was in favor of the plaintiff in error, and in deciding said case upon the issues therein against the plaintiff in error in this, to-wit, this suit is an action brought by the plaintiff in errer in the district court of Hamilton county, Nebraska, to establish her title to the land described in her petition. This suit is based on a judgment and decree of the superior court of King county, Washington, in an action between one Edmund W. Fall and Sarah S. Fall, for divorce and an equitable division of the property of both, in which suit both parties personally appeared, and wherein the court adjudicated as between the plaintiff in error and said Edmund W. Fall, grantor of the defendant in error, who had full notice of the rights and equities of plaintiff in error in said land, that the plaintiff in error herein, Sarah S. Fall, who was defendant in that suit, was the owner of the land in the pending controversy and was equitably entitled to a conveyance thereof, and ordered said Edmund W. Fall to convey same to the plaintiff in error; and therein and thereby the equities in said land of the plaintiff in error and Edmund W. Fall were fixed and determined.

The supreme court of Nebraska, by its judgment and decision in this case, has refused to give full faith and credit to the judgment of the superior court of King county, Washing-

ton, and thereby denied to the plaintiff in error the right and privilege to which she is entitled under the first section of article four of the Constitution of the United States, which provides: "Full Faith and Credit shall be given in each State to the Public Acts, Records and Judicial Proceedings of every other State"; because the supreme court of Nebraska refused to recognize and accept the judgment and decree of the superior court of King county, Washington, as an adjudication of the rights of the parties to that suit in the property in controversy.

ARGUMENT

The single question for decision is:

> Is the decree of a court having jurisdiction over the parties to a suit and the subject matter thereof, which adjudges and determines the equitable rights of the parties before it in lands in another state, entitled to faith and credit in the courts of the latter state, in a suit brought to establish or quiet the legal title to the lands, by the party in whose favor the equitable ownership therein was thus decreed?

The decree of the superior court of King county, Washington, established the equities in the land in controversy in favor of Mrs. Fall. When the Washington litigation ended, she was entitled to a conveyance of the property, the same as though she and her former husband had been strangers and she had bought the land from him and paid for it and he had then refused to convey it to her. The decree of the Washington court is evidence of her right to the legal title of at least as much weight and value as a contract in writing, reciting the payment of the consideration for the land, would be.

The suggestion of the Nebraska supreme court that "the provision of the constitution establishes a rule of evidence rather than of jurisdiction" (see printed record, top p. 136),

did not give the Nebraska court the right to disregard the evidence of Mrs. Fall's equities in the land established by the decree of the Washington court. What this court means by its declaration that the constitutional provision invoked herein establishes a rule of evidence rather than of jurisdiction, is thus stated in *Hanley v. Donoghue,* 116 U. S., 1, wherein it is said:

> "Judgments recovered in one state of the Union, when proved in the courts of another, differ from judgments recovered in a foreign country in no other respect than that of not being re-examinable upon the merits, nor impeachable for fraud in obtaining them, if rendered by a court having jurisdiction of the cause and of the parties. . . . . And if it (the record of a judgment) appears upon its face to be a record of a court of general jurisdiction, *the jurisdiction of the court over the cause and the parties is to be presumed unless disproved by extrinsic evidence or by the record itself.*"

It is also held in *Hanley v. Donoghue:*

> "By the settled construction of these provisions of the Constitution and statutes of the United States, a judgment of a state court, in a cause within its jurisdiction and against a defendant lawfully summoned, or against lawfully attached property of an absent defendant, is entitled to as much force and effect against the person summoned or the property attached, when the question is presented for decision in a court of another state, *as it has in the state in which it was rendered.*"

See also *Wisconsin v. Pelican Insurance Company* 127 U. S., 265.

In the suit at bar, due proof was made of the statute under which the Washington court asserted its jurisdiction to render the decree relied upon, as well as of the decisions of the supreme court of the state of Washington which construe the

statute; and both the statute and the excerpt from one of the decisions of the supreme court of Washington are recited in the language of Mr. Justice SEDGWICK of the Nebraska supreme court, which has been incorporated in the statement of facts.

Public policy in this country protects marital rights, and when those rights are invaded so that the law authorizes a dissolution of the relationship itself, the same public policy requires an apportionment or distribution of the property accumulated by the husband and wife during the term of their marriage. In some states, as in Washington, the parties are authorized and required under the law to list all of their belongings, and, in the language of the court, "to lay their property at the feet of the chancellor"; and that is what E. W. Fall himself did in the suit he brought. He was the first to invoke action by the Washington court, which should directly relate to the property which he claimed for himself, but which the court held was community property, that is, accumulated through the joint efforts of himself and the plaintiff in error during their marriage. The circumstance that this particular property was incapable of being physically transferred to the jurisdiction of the Washington court is immaterial. It was not necessary that it should be within the jurisdiction of the Washington court in order to adjudge the equitable rights of the parties before that court to the lands in Nebraska, any more than it would be contrary to law for the parties to make a contract in the state of Washington concerning lands in the state of Nebraska. On the other hand, the laws of Nebraska provide for another method of equitable distribution of the property of the husband and wife who appear before the courts of that state in divorce proceedings. In Nebraska, equity is done through the medium of the courts by a judgment for alimony, which is a lien upon real estate in the name of that one of the

parties—usually the husband—against whom the judgment runs, to be collected as any other judgment.

But whether the property is distributed directly in the divorce proceeding, as in Washington, or by a judgment for alimony, as in Nebraska, the thing which the court does in a decree of divorce in favor of the wife, in either case, is to carry the personal separation effected through the divorce to the property of the parties before it, so as to recognize and give effect to the equitable rights of the wife in the lands,—the record title to which may stand in the husband's name. In this case, there was a specific averment in Mrs. Fall's cross-petition that the land in controversy "was purchased with the money and proceeds of the joint labor" of Sarah S. Fall and E. W. Fall "*after their marriage*" (p. 40), and this the Washington court found to be the fact, and *it is not denied!* It is, therefore, not material, when considering the matter from the standpoint of the public policy involved, what varying methods are adopted in the several states to accomplish judicial recognition of the wife's equities in the property accumulated through the joint efforts of herself and husband.

In *Huntington v. Attrill*, 146 U. S., 684, your Honors said:

> "If the state court declines to give full faith and credit to a judgment of another state, because of its opinion as to the nature of the cause of action on which the judgment was recovered, *this* court, in determining whether full faith and credit have been given to that judgment, must decide for itself the nature of the original liability."

Your Honors quote the following statement by Mr. Justice STORY, wherein he said the faith and credit clause of the Constitution "was intended to give the same conclusive effect to judgments of all the states, so as to promote uniformity, as well as certainty, in the rule among them."

Mr. Justice STORY's further statement of the objects of

this clause of the Constitution is crystalized in the language of the court as follows:

> "First, to declare, and by its own force establish, that full faith and credit should be given to the judgments of every other state; second, to authorize Congress to prescribe the manner of authenticating them; and third, to authorize Congress to prescribe their effect when so authenticated."
>
> See Story on Constitution, Sec. 1307, 1308.

Not only did Congress in the exercise of that power prescribe the manner in which records and judicial proceedings of any state shall be authenticated, but it has defined the effect thereof by enacting that "the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the State from which they are taken." *Huntington v. Attrill, supra.*

Yours Honors say that though the provisions of the Constitution and the laws of the United States referred to, must be "read in the light of some established principles, which they were not intended to overthrow;" they were not intended to give "effect to judgments of a court which had no jurisdiction of the subject-matter or of the parties;" nor do they confer any "new jurisdiction on the courts of any state;" nor do they "put the judgments of other states upon the footing of domestic judgments, to be enforced by execution; but they leave the manner in which they may be enforced to the law of the state in which they are sued on, pleaded, or offered in evidnce;" but when, as in the case at bar, judgments of one state are duly pleaded and proved in the courts of another, they have the effect of being "not merely *prima facie* evidence, but conclusive proof, of the rights thereby adjudicated; and a refusal to give them the force and effect, in this respect, which

they had in the State in which they were rendered, denies to the party a right secured to him by the Constitution and laws of the United States." *Huntington v. Attrill, supra.*

Cheever v. Wilson, 9 Wall., 108, was an appeal from a decree of the supreme court of the District of Columbia, in which it appeared that a marriage settlement was made which vested the title to certain real estate situated in the District of Columbia in the mother of the wife, in trust, so that the wife should "receive, take and enjoy the rents and profits of the said lands and premises to her sole and exclusive use and benefit." Some years after the marriage, the wife and her mother made a lease of, and thereafter executed a mortgage on the property, to secure certain moneys loaned by Wilson to Mrs. Cheever, the wife. At a still later date, Mrs. Cheever brought an action for divorce in a state court of Indiana, describing herself as a bona fide resident of the county in which the suit was brought. The divorce court gave to the husband the custody of three of the children and to the wife the custody of the younger one, and provided that for the support and education of those children whose custody was given to the husband, he should receive one-third of the rents and profits to which Mrs. Cheever was entitled accruing from the property described in the deed of settlement. Afterwards, Mrs. Cheever married again, and she and her second husband gave Wilson an assignment of all their rents accruing from the property mentioned in the settlement, up to a certain sum. The complainant's bill sought a specific performance of the Indiana decree against Wilson, as to the portion of the rents allotted to Cheever for the benefit of the children; and an auditor to whom the case was referred to state an account, found the amount to which Cheever was entitled as against Wilson.

Upon these facts, it was held that the petition filed in the

state court of Indiana warranted the exercise of the authority which was invoked, and your Honors said:

> "It contained all the requisite averments. The court was the proper one before which to bring the case. It had jurisdiction of the parties and the subject-matter. The decree was valid and effectual, according to the law and adjudications in Indiana. Stat. of 1852, sec. 33; *McQuigg v. McQuigg*, 13 Ind., 294; *Noel v. Ewing*, 9 Ind., 52; *Lewis v. Lewis*, 9 Ind., 105; *Rourke v. Rourke*, 8 Ind., 430; *Tolen v. Tolen*, 2 Blackf., 407; *Wilcox v. Wilcox*, 10 Ind., 436.
>
> The Constitution and laws of the United States give the decree the same effect elsewhere which it had in Indiana."

The decisons of this court give no countenance to the claim of the Nebraska supreme court, that the jurisdiction of the Washington court to adjudge the equities of the parties to the suit pending therein in the land in controversy would not be recognized, *because* such judgment or decree would not be rendered by a court of Nebraska. It will not be pretended that the Washington court was not invested, by the law of Washington, with the jurisdiction it asserted; nor can it be denied that such jurisdiction was in accord with the public policy of that state as declared by its legislature and its highest court.

In cases where there have been attempts to impeach, by collateral attack, the judgments of one court when sought to be enforced in another, your Honors have required evidence establishing the want of jurisdiction. In *German Savings & Loan Society v. Dormitzer*, 192 U. S., 125, the supreme court of Washington refused to recognize a decree of divorce rendered in Kansas because there was evidence that before the plaintiff in the divorce suit commenced the same, he had changed his domicile from Kansas to Washington, and there-

fore the decree was without jurisdiction and void. Of this your Honors, speaking through Mr. Justice HOLMES, said:

> "It very well may be that, if the supreme court of Washington had undertaken to deny the jurisdiction of the Kansas tribunal without evidence impeaching it, such an invasion of the Constitution would not be upheld."

This principle was likewise tersely stated in *Rogers v. Alabama*, 192 U. S., 226, 231:

> "There can be no doubt that if full faith and credit were denied to a judgment rendered in another state upon a suggestion of want of jurisdiction, without evidence to warrant the finding, this court would enforce the constitutional requirement."

In the case at bar, the undisputed facts are that when E. W. Fall brought his suit against the plaintiff in error, Sarah S. Fall, they both resided in the state of Washington, and in the petition filed by him in that suit, he listed this land, thus recognizing his wife's equity in it; and, though he claimed to be the owner of it, his prayer was "for a just and equitable division of the property herein described." (p. 39). As already stated, Mrs. Fall claimed (par. 3 of her cross-petition, p. 40), and the court found (fourth finding of fact, p. 49), that she had contributed both labor and money to the purchase of the land. There was an actual contested trial, each asserting against the other grounds of divorce, each claiming to have a superior equity in this land, whereby they subjected not only themselves, but the equitable rights in this property, to that court.

It therefore appears that the implied denial by the Nebraska court of jurisdiction in the Washington court to render the decree, so far as it dealt with the rights of the parties to the land, is unsound in principle and cannot be sustained.

If this criticism of the position taken by the Nebraska supreme court is valid, there is great mischief in the refusal to

give to a decree of the courts of Washington the force and effect claimed for it merely *because* it would be denied to a decree of the courts of Nebraska upon the same cause of action. The constitutional provision, and the laws of Congress enacted in pursuance thereof, were intended to compel the courts of one state to recognize the judgments of the courts of another state, and thus preserve that comity without which the union of states would be nothing but a mockery. But the Nebraska court in this connection commits a singular error in its statement of the fact assigned as one of the reasons for its untenable position. The opinion written by Mr. Justice LETTON says:

> "We must accord full faith and credit to the divorce decree since the Washington court had jurisdiction to render it, but we are not compelled to recognize a decree affecting the title of E. W. Fall and his grantees in an action where he is not in court by personal service, and where the act directed by the Washington court is in opposition to the public policy of this state in relation to the enforcement of the duty of marital support."

That part of the sentence above quoted which follows recognition of the validity of the decree of divorce, either relates to the same deree, or it is utterly meaningless!

Again, and near the end of the majority opinion, the decree of the Washington court is referred to as "an attempt to convey and set apart real estate in Nebraska by a court of another state when not acting upon and through the person of the owner when under its jurisdiction."

When the Nebraska supreme court grounded its decision, or any reason for its decision, in this case, upon the statement that "the decree affecting the title of E. W. Fall and his grantees" was rendered "in an action where he is not in court by personal service," and that the Washington court was "not

acting upon and through the person of the owner when under its jurisdiction," it assumed the fact exactly contrary to the truth; for it is unnecessary to remind your Honors that the suit in which the decree was rendered, adjudging the equities of Sarah S. Fall and E. W. Fall in the land in controversy, was a suit—not only where he was in court in person, but a suit which he himself brought; how, then, could the court correctly say or imply that E. W. Fall was "not in court by personal service" and that the Washington court had no jurisdiction of "the person of the owner?" Moreover in this very suit the district court of Hamilton county, Nebraska, on September 30, 1897, rendered a binding decree against E. W. Fall, which remains in full force and effect, never having been attacked in any way by anybody. (p. 14.)

The final reason assigned in the opinion written by Mr. Justice LETTON, denying to Mrs. Fall the establishment of her title, is equally untenable. The claim is far fetched, indeed, that there is any attack upon the sovereignty of the state of Nebraska over the lands within its borders. The suit filed in the district court of Hamilton county, Nebraska, was an express recognition of the sovereignty which the supreme court of Nebraska conceives it a duty to guard so closely. All of the legal procedure connected with this whole transaction, which was initiated and conducted in the state of Nebraska, was an appeal to that sovereignty for the exercise of so much of it as was vested in the courts of Nebraska. Equitable rights in property are everywhere recognized as superior to mere title; but it is the policy of the law to unite equitable rights in land with the legal title thereto, although land may be bought and sold as other property by the mere transfer of possession. This suit is, therefore, an application to the state of Nebraska to exercise that portion of her sovereignty committed to her courts, to establish Mrs. Fall's equitable rights in the land in

controversy *as the legal title thereto*, in lieu of the mere record title in the name of E. W. Fall's grantee, which was acquired with notice of the paramount equities found and adjudged by the Washington court. The suggestion that, to give the decree any validity, obedience to it should have been compelled, was well answered by Mr. Justice SEDGWICK in his disenting opinion, which we adopt as our argument, as follows:

> "The authorities from which this thought is derived have been misunderstood, as it appears to me. The court which enters the decree can only enforce it by acting upon the person, and that is all of the meaning of these authorities. The decree is binding upon the conscience of the parties. In what sense is it binding upon the conscience? Would the conscience be released from the obligations of this decree as soon as they crossed the state line? If their consciences are affected and bound by the decree, it would seem that they would be so bound until they complied with the decree. If litigants come before the courts of equity of this state and concede that they are in conscience bound to acknowledge the rights and interest of their adversary in the matter in dispute, what is the duty of the court of equity? It is for no other purpose that courts of equity are established. It is to compel litigants to do what they are in conscience bound to do. And so here, if Mr. Fall is in conscience bound to transfer the legal title of this land to Mrs. Fall, and if his grantees knew when they took their title from him that he was in conscience bound to do so, and these parties are before a court of equity in this state, the power and duty of the court is clear."

With due respect to the wisdom and learning of the supreme court of Nebraska, its majority opinion does not distinguish between equitable rights in land, and the legal title thereto; and this failure to distinguish between two vitally dis-

tinct things is responsible for the fundamental error of that court.

As is said by Mr. Justice SEDGWICK in his dissenting opinion, "equitable rights are personal rights and may be adjudicated where the parties are; but the legal title can only be severed and the land apportioned where the land is. This is a sufficient reason for holding that the courts of one state cannot partition the title to lands."

But the principle which controls in such a case is stated by Mr. Justice BREWER, speaking for this court, in *Dull v. Blackman*, 169 U. S., 243, which was an action brought in Iowa to compel a reconveyance of real estate situated in that state, on the ground of defendant's failure to advance money thereon as agreed. By way of defense in that suit, a judgment rendered in the supreme court of New York was pleaded, for which full faith and credit was claimed, but it appeared that the party whose rights were to be affected by the litigation in Iowa had not been served with process in the suit pending in New York, except by the delivery in Omaha of a copy of the New York complaint and summons, and though they made no appearance in the New York court, that court proceeded to render a decree against them. It further appeared that the entire right and title in the property in controversy passed from Blackman, who was personally served in the New York case, to Phelan, who was not served, nearly two months before the suit in New York was commenced. Whereupon Mr. Justice BREWER, speaking for your Honors, said:

> "Upon these facts we remark that as the land, the subject matter of this controversy, was situate in Iowa, litigation in respect to its title belonged properly to the courts within that state, *Ellenwood v. Marietta Chair Co.*, 158 U. S., 105, 107, although if all the parties interested in the land were brought personally before a

court of another state, its decree would be conclusive upon them and thus in effect determine the title."

Did the Washington court have jurisdiction and authority to divide the land between the parties to the divorce proceedings and to adjudge the equitable rights of the wife in the land in controversy?

The record shows that the courts of Washington have statutory authority to make "such disposition of the property of the parties as shall appear just and equitable, having regard to the respective merits of the parties, and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired," (p 6.) The Washington court proceeded upon the theory that the parties were within its jurisdiction, and that the husband would perform the obligations imposed upon him by the decree; or, in the event of his refusal, that the court could compel him to execute the decree. But the husband refused to make the deed and placed himself beyond the reach of the process of the court.

The result was that while, under the decree, the interest and equity of the wife in the land were separated from the interest and equity of the husband and vested in her, and while she subsequently took possession and has maintained it ever since, the record title still remained in her husband or his grantee. It was clearly her right to have the Nebraska courts complete her ownership by confirming the title in her, unless it should refuse to "give full faith and credit" to the decree of the Washington court.

If the Washington court had jurisdiction of the interest and equities of the parties so as to separate the one from the other and to vest in each the several interests belonging to

him or her, the Nebraska court would be bound, under the first section of Article IV of the Constitution of the United States, to give full faith and credit to the decree.

It is not claimed that the Washington court could create an equity in lands in Nebraska by any finding or decree it might make, and thus bind the courts of a sister state; but it is claimed that *where rights and equities already exist, the parties being within the jurisdiction of the court*, it can divide them and apportion them by a judgment or decree which would be conclusive upon the parties in any subsequent proceeding in a court having jurisdiction of the lands, for the purpose of quieting the title in the equitable owner.

The parties to the former proceedings prayed the court to divide their interest in the property which they had acquired during coverture. They did not attempt to bring the land into court, but simply their joint rights and interest in the land. The record title to the land was in the husband. So, far however, as the actual ownership of the land was concerned, the wife had an interest or equity in it which could be ascertained and made the subject of a judgment and decree that would be conclusive upon the husband, not only in the courts of Washington, but in the courts of any other state.

We do not claim that the parties could bring anything into the Washington court by merely scheduling the property in their bills, unless they had some equities or interests which were there in virtue of their presence and appearance in the suit. We insist that the *thing* which the Washington court was asked to consider was a thing which had a legal existence in the persons of the parties, without regard to the situs of the land out of which it proceeded.

Under the laws of Nebraska, a wife has an interest in the property created by the joint and several industry of the

husband and wife during coverture; so much of an interest, indeed, that although the title may be in the husband, he cannot transfer the title or convey the land, except that she join in the deed. We speak of it as a dower interest, but it matters very little what we call it; it is an interest and a valuable interest,—an interest that crystalizes itself into definite ownership upon the dissolution of the marriage contract by death; an interest which, we insist, may be crystallized into definite property rights upon the dissolution by divorce, where the court granting the divorce has the power to deal with it.

While it is true that under the laws of Nebraska, the courts are authorized to consider the property interests involved and to ascertain the fair and reasonable value in dollars of the wife's interest and to give it to her as alimony, this is a mere form. The whole proceeding under the Nebraska statute recognizes that the wife has property rights and interests which should be given to her upon the dissolution of the marriage relation. The question of how the wife's interest is to be given to her is one of method or means, but it is as distinct a recognition of the principle that she has an equity or interest in the property, although the husband may hold the title, as if the courts were clothed with statutory power to divide the property itself.

It seems to us that the principle we assert is recognized by the courts in the matter of co-partnerships. It was discussed in *Shanks v. Klein*, 104 U. S., 19, where Mr. Justice MILLER delivered the opinion of the court. It appears from the opinion that, in their lifetime, Joseph H. Johnson and Shepard Brown were partners doing business under the name of Brown & Johnson, in Vicksburg, Mississippi. They owned considerable real estate, which was in different parcels and localities. It was bought and paid for by partnership money, and held as

partnership property for the general uses of the business. Johnson died in the state of Virginia, where he resided, leaving all his property, including all his interest in the partnership, by will to David C. Shank, the executor thereof. During the war, one member of the firm was in Virginia and the other in Georgia; but upon the cessation of hostilities, Brown returned to New Orleans, and finding that suits had been commenced by creditors, and, in some instances, attachments levied, he executed a deed conveying the property of the firm to John A. Klein for the purpose of realizing upon it and discharging the partnership debts. Klein accepted the trust, and pursuant thereto paid debts with the land, or with the proceeds of the sale thereof. After the property had been sold to purchasers in good faith, Shanks, as the executor of Johnson's will, instituted actions of ejectment against them. They thereupon filed a bill to enjoin him from further prosecuting the actions, and to compel him to convey the legal title to the real estate which came to him by the will of the testator. A decree was rendered in conformity with the prayer of the bill and Shanks appealed. The court held that all the real estate, regardless of the situs, should be treated as partnership property, bought and held for partnership purposes. The contention was that Brown had no right to convey the interest of Johnson, vested in Shanks by his will, or even to make a contract for the sale thereof. It was contended that, so far as the American courts were concerned, the doctrine was that the creditors of a partnership and the surviving partner have a lien on the real estate of the partnership for debts due by the firm and for any balance found due either partner, upon final settlement of the partnership transaction; and that the right of the surviving partner and of the creditors through him, is no more than a lien which cannot be asserted by sale as if the property were

personal, but for the enforcement of which resort to a court of equity is necessary.

The court, in considering this doctrine, said:

> "We think that the error which lies at the foundation of this argument is in the assumption that the equitable right of the surviving partner and the creditors is nothing but a lien.
>
> It is not necessary to cite here that it is not a lien in the strict sense of that word, for if it be a lien in any sense, *it is also something more!*
>
> It is an equitable *right*, accompanied *by an equitable title.* It is an *interest in property* which courts of chancery will recognize and support. What is that right? Not only that the court will, when necessary, see that the real estate so situated is appropriated to the satisfaction of the partnership debts, but for that purpose, and to that extent, it shall be treated as personal property of the partnership, and like other personal property pass under the control of the surviving partner. This control extends to the right to sell it, or so much of it as may be necessary to pay the partnership debts, or satisfy the just claims of the surviving partner."

The equities and interests which were under consideration arose out of considerations of right and of general policy between creditors, and the partnership. In other words these equities and rights were such that a court of equity would consider lands in another jurisdiction as personal property and thus a conveyance of lands by the surviving partner to a trustee was sustained upon a theory which could only be justified by the law of necessity to protect the rights and interests of all concerned in or involved in the partnership transaction.

Courts deal with the marriage relation as growing out of civil contracts, or contracts which establish a sort of equitable

co-partnership in the property acquired by the joint toil and economy of the parties. A dissolution of this contract involves necessarily a division of all their property rights and interests. The question of who has the title is not the controlling one. The disposition of the property is a matter of general public interest, and every consideration of decent treatment to women requires that the wife, as well as the husband, shall participate in the proceeds of the division. The proposition that after the husband and wife have lived together and, by their joint and several industry and economy, have acquired an estate of value, that upon a divorce the wife shall be treated as having no right or interest in the property, would be simply abhorrent to our sense of right and justice! Certainly a court of equity, clothed with full power to not only dissolve the bonds but to dissolve the property interest, however involved or wherever located, may give weight and authority to a decree based upon the application of both parties, separating their joint rights and equities in their property, and such decree should, by every rule and principle, receive full faith and credit in the courts of this country.

In *Dunlap v. Byers,* 110 Mich., 109, 67 N. W., 1067, that court, following *Shanks v. Klein, supra,* held:

> "A foreign court having general equity powers and having jurisdiction of the parties in a suit for the dissolution of a partnership and the settlement of its affairs, had power to direct the received to sell partnership lands situated in this state (Michigan)."

In the opinion it is said:

> "The rule seems to be well settled that while the decree itself in such cases would not directly affect the transfer of title, the decree of the court would bind the consciences of the parties and could be enforced by the court within the territory where the property is located."

In *Polson v. Stewart,* 167 Mass., 211, 45 N. E., 737, which was an action seeking, in its purpose and effect, to quiet the title to lands in Massachusetts, a husband and wife domiciled in North Carolina (where a wife could contract as a feme sole) entered into a contract to release the wife's dower in her husband's lands, in consideration of which he executed a covenant to her to surrender all his marital rights in certain lands held by her in Massachusetts. This contract would not have been valid under the Massachusetts law, for in that state a husband and wife are under a general disability and incapacity to mke contracts with each other.

On these facts, Mr. Justice HOLMES, then a member of the Massachusetts court, said:

> "But it is said that the laws of the parties' domicile could not authorize a contract between them as to lands in Massachusetts. Obviously, this is not true. It is true that the laws of other states cannot render valid conveyances of property within our borders which our laws say are void, for the plain reason that we have exclusive power over the res."

There is no substantial difference in the effect of a contract in writing between parties, executed in one state and concerning lands in another, which could not have been made by the parties in the latter state, and a decree of a court in one state, fixing the rights of the parties in lands situated in another state, wherein a similar decree would not have been made in that sort of a suit.

The commands of the constitutional requirement invoked in this litigation, and the laws enacted by Congress to aid in its execution, have uniformly been enforced in this court. Quite recently a judgment of the supreme court of Nebraska was reversed because it violated this constitutional provision.

In *Jaster v. Currie,* 198 U. S., 44, in a suit brought

by the plaintiff in error in Nebraska upon a judgment recovered by him against the defendant in Ohio, the defendant pleaded that the plaintiff had brought a previous action in Nebraska upon the same cause; and in the Nebraska case had served a notice to take a depositon in Ohio; that the defendant being advised by his attorney so to do, went to Ohio for the purpose of attending the taking of that deposition, and being in his father's house in Ohio, was served with a summons which the Ohio court refused to set aside, and judgment followed. The Nebraska court declined to recognize the validity of the Ohio judgment on the the theory that the service was fraudulent; but your Honors held that such refusal did not give the party claiming the benefit of the Ohio judgment his constitutional rights.

In *Harris v. Balk*, 198 U. S., 215, the supreme court of North Carolina refused to give effect to a judgment in a Maryland court in garnishment proceedings, and your Honors in an opinion written by Mr. Justice PECKHAM, said:

> "If the Maryland Court had jurisdiction to award it, the judgment is valid and entitled to the same full faith and credit in North Carolina that it has in Maryland as a valid domestic judgment."

In *Harding v. Harding*, 198 U. S., 317, this court speaking through Mr. Justice WHITE, held that the refusal of the courts of California in a divorce case to recognize an Illinois decree for the separate maintenance of the wife, "failed to give to the decree of the Illinois court the due faith and credit to which it was entitled, and thereby violated the Constitution of the United States."

It is therefore insisted that the refusal of the supreme court of Nebraska to give faith and credit to the adjudication in favor of the plaintiff in error, by the Washington court, of

her equitable rights in the land in controversy, in the apt language of Mr. Justice WHITE, "violated the Constitution of the United States."

It is respectfully submitted that the judgment of the supreme court of Nebraska must be reversed.

CHARLES J. GREENE,
RALPH W. BRECKENRIDGE,
THOMAS H. MATTERS,
Attorneys for Plaintiff in Error.

Omaha, Nebraska, March 1, 1909.